Office - Supreme Court, U.S.
FILED
FEB 21 1958
JOHN T. FEY, Clerk

...AY
UPREME COURT, U. S.

No. 800

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

LIBRARY
SUPREME COURT, U. S.

In the Matter of the Petition

of

SKIBS A/S JOLUND

as owner of the Motor Vessel BLACK GULL, for exoneration from or limitation of liability for damages arising out of a fire on board said vessel on July 18, 1952

APPENDIX ON BEHALF OF SKIBS A/S JOLUND, PETITIONER-APPELLEE

HYNE, BRUSH, SMITH & MICHELSEN,
Proctors for Petitioner-Appellee.

INDEX

PAGE

Answer of United Fruit Company ..... A 2

Answer of Jan A. Driesprong, et al ..... A 6

Answer of Kaare B. Blixt ..... A 12

Answer of Olav Karlsen ..... A 13

Interrogatories ..... A 15

Answers to Interrogatories ..... A 20

Exception to Answers to Interrogatories ..... A 27

Order ..... A 31

Supplemental Answers of Claimaints to Certain Interrogatories Propounded by Petitioner ..... A 34

Extracts from Opening Statements ..... A 44

WITNESSES

APPELLANT'S (CLAIMANT'S AND LIBELLANT'S) WITNESSES

Fritjof Andersen:
Direct ..... A 87

Chester A. Snell:
Cross ..... A 101

Joseph Mazzotta:
(Rebuttal)
Direct ..... A 408
(Rebuttal)
Cross ..... A 409

APPELLEE'S (PETITIONER JOLUND'S) WITNESSES

PAGE

Nils Valen:
Direct ..... A 196
Cross ..... A 218
Re-direct ..... A 239

Gustave Olson:
Direct ..... A 246
Cross ..... A 255, A 256, A 258
Re-direct ..... A 259

Harry Kristiansen:
Direct ..... A 261
Cross ..... A 272

Fritjof Andersen:
Direct ..... A 348
Cross ..... A 365, A 374

Harvey Lyngaas:
Direct ..... A 376
Cross ..... A 390, A 401

DEPOSITIONS

APPELLANT'S (CLAIMANT'S AND LIBELLANT'S) DEPOSITIONS

Captain W. J. Swart ..... A 45

Harold Farstad ..... A 45

J. Driesprong
Cross ..... A 47, A 79

Jacobus de Nobel ..... A 48, A 79

Peter Spanderman ..... A 48
Cross ..... A 49, A 80

Jan P. Muller ..... A 50

PAGE

Thomas D. Leeson ..... A 52, A 82

Mrs. Jeanne Leeson ..... A 55, A 86

Dr. Jules Aeby ..... A 57

Carl van den Bosch ..... A 61

Dr. A. C. W. Beerman ..... A 63

Dr. Sjur Braekhus ..... A 69

Alfons Spiessens ..... A 73

Peter Ras ..... A 74

Pedrick D. Herlofsen ..... A 74

Captain Inge Svendsen ..... A 78

COMDR. JOSEPH MAZZOTTA A403

APPELLEE'S (PETITIONER JOLUND'S) DEPOSITIONS

Pedrick D. Herlofsen ..... A 102, A 127

Captain Inge Svendsen ..... A 124, A 132

Albert Zimmermann ..... A 147

Joseph Collard ..... A 162

Jacques van Doosselaere ..... A 172

Francois Verworst ..... A 179

Harold Farstad ..... A 242

Dr. W. N. E. Van Rossem ..... A 284

Dr. A. Blussee ..... A 323

Captain C. A. W. Bos ..... A 343

DR SJUR BRAEKHUS A152

EXHIBITS

Appellee's (Petitioner Jolund's) Exhibits

PAGE

C—Terms of Contract with Passenger ..... A 412

D-2—Abstract of the Log Book for Black Gull for the time 3-18th July 1952 ..... A 414

G—Report on Loading and Discharging ..... A 415

H—Voyage Report ..... A 416

I —Passengers Account voyage No. 20 ..... A 417

J —Specification of Crew ..... A 418

L—Summary of Inspection and Survey ..... A 420

M—Cargo Report ..... A 424

U—Danger Labels ..... A 425

V—Letter of J. Metz, Inspector of Shipping dated 20th August 1955 ..... A 426

X—Statement of J. van Leeuwen ..... A 427

Y and AA and AB—(Exhibit Y is a book in Norwegian. Exhibits AA and AB are English translation of sections of Exhibit Y) ..... A 428

Z—Plan of "Black Gull" (with red marks made by witnesses) ..... A 431

Appellant's (Claimant's and Libellant's) Exhibits

17—Plan of "Black Gull" (with red marks made by witnesses) ..... A 433

37-A—"Dangerous Goods" (Section 99) ..... A 434

39—Cargo survey by John Hudig & Son ..... A 435

40—Copy of the Note of Protest S.S. "Norwalk Victory" ..... A 438

20—"Dangerous Goods"—by Dr. Jules Aeby ..... A 442

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

In the Matter of the Petition

of

SKIBS A/S JOLUND,

as owner of the Motor Vessel BLACK GULL, for exoneration from or limitation of liability for damages arising out of a fire on board said vessel on July 18, 1952

APPENDIX ON BEHALF OF SKIBS A/S JOLUND, PETITIONER-APPELLEE

Answer of United Fruit Company

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

UNITED FRUIT COMPANY as Bailee of certain cargo carried on board the Motor Ship BLACK GULL, * * * answers the Petition of SKIBS A/S JOLUND as owners of the Motor Ship BLACK GULL, * * *:

FIRST: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "FIRST".

SECOND: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "SECOND".

THIRD: Denies the matters contained in Article "THIRD".

FOURTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "FOURTH".

FIFTH: Denies the matters contained in Article "FIFTH".

SIXTH: Admits that on July 18, 1952, while proceeding from Rotterdam to New York, and while approximately 65 miles off Montauk Point, a fire was discovered on board the MS BLACK GULL. It further admits that the fire spread rapidly and that the MS BLACK GULL was in due course abandoned. It denies knowledge or information sufficient to form a belief as to the amount of damage due and loss of property and of injuries and debts which might have occurred as a result of the fire.

Answer of United Fruit Company

Denies knowledge or information sufficient to form a belief as to whether or not such loss and damage and injuries and debts are presently calculable. Except as specifically admitted herein, it denies the matters contained in Article "SIXTH".

SEVENTH: Denies the matters contained in Article "SEVENTH".

EIGHTH: Denies the matters contained in Article "EIGHTH".

NINTH: Denies the matters contained in Article "NINTH".

TENTH: Admits the matters contained in Article "TENTH".

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "ELEVENTH".

TWELFTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "TWELFTH".

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "THIRTEENTH".

FOURTEENTH: Admits the Admiralty and Maritime jurisdiction of this Honorable Court. Except as specifically admitted, it denies the matters contained in Article "FOURTEENTH".

FURTHER ANSWERING PETITIONER HEREIN, UNITED FRUIT COMPANY ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

FIFTEETH: UNITED FRUIT COMPANY is a corporation duly organized and existing under and by virtue of the laws

of the State of New Jersey with an office and place of business in the City, County and State of New York.

SIXTEENTH: On or about July 1, 1952, it issued its own through bills of lading covering the following merchandise:

1) Tela Railroad Company—ultimate consignee—enamelware

2) Cia, Bananera de Costa Rica—Limon—ultimate consignee—pocket knives and enamelware

3) Grenada Company—Puerto Libertador—ultimate consignee—enamelware

Photostatic copies of the aforesaid bills of lading are attached to the claim which was previously filed on September 30, 1952 and which forms a part of the record of this proceeding.

SEVENTEENTH: At all times mentioned herein the ultimate consignees named in the aforesaid bills of lading were wholly-owned subsidiaries of UNITED FRUIT COMPANY and UNITED FRUIT COMPANY answers the Petition as Bailee of the aforesaid cargo and as agent for the owners thereof.

EIGHTEENTH: UNITED FRUIT COMPANY thereafter entered into an agreement under and by which the aforesaid goods were to be carried from the port of shipment to New York on the MS BLACK GULL.

NINETEENTH: Thereafter and pursuant to the aforesaid agreement and pursuant to the terms and provisions of the aforesaid bills of lading, the merchandise previously referred to was delivered to and loaded upon the MS BLACK GULL in good order and condition and all in accordance with a certain consideration which was paid and the terms and provisions of the aforesaid agreements.

Answer of United Fruit Company

TWENTIETH: On or about July 18, 1952 while the vessel was proceeding to the United States with the aforesaid cargo on board a fire occurred. Thereafter, the vessel was abandoned as a constructive total loss and the aforesaid cargo, all in violation of the Petitioner's obligations and duties as a common carrier of merchandise by water for hire has remained short-delivered up to and including the present time.

TWENTY-FIRST: By reason of these premises damages have been sustained in the amount of $11,525.56, no part of which has been paid although duly demanded.

TWENTY-SECOND: UNITED FRUIT COMPANY is authorized to make this claim both in its own behalf and in behalf of the aforementioned consignees.

All and singular the premises are true and within the Admiralty and Maritime jurisdictions of the United States and of this Honorable Court.

WHEREFORE, UNITED FRUIT COMPANY prays that a decree be entered in its favor against Petitioner herein in the amount of $11,525.56 together with interest, costs and disbursements.

EUGENE F. RUSSELL, JR.
Proctor for UNITED FRUIT COMPANY,
as Bailee, etc.

(Verified by Eugene F. Russell, Jr., Atty. March 24, 1953.)

Answer of Jan A. Driesprong, et al.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The Answer of JAN A. DRIESPRONG, et al., • • • to the petition of SKIBS A/S JOLUND of Oslo, Norway, owner of the M. S. "BLACK GULL", for exoneration from or limitation of liability, alleges upon information and belief as follows:

FIRST: Claimants have heretofore filed their claims herein under oath by their attorneys, ABBERLEY, KOOIMAN & AMON, on their behalf and on behalf of all others in interest as aforesaid.

SECOND: Claimants admit that the petitioner, at all times herein mentioned, was the owner of the M. S. "BLACK GULL", but deny that they have knowledge or information sufficient to form a belief as to the remaining allegations contained in Article "FIRST" of the petition.

THIRD: Claimants deny that they have knowledge or information sufficient to form a belief as to the allegations contained in Article "SECOND" of the petition.

FOURTH: Claimants deny each and every one of the allegations contained in Article "THIRD" of the petition.

FIFTH: Claimants deny that they have knowledge or information sufficient to form a belief as to the allegations contained in Article "FOURTH" of the petition.

SIXTH: Claimants deny each and every one of the allegations contained in Article "FIFTH" of the petition.

SEVENTH: Claimants answering Article "SIXTH" of the petition admit that on July 18, 1952, the M. S. "BLACK

GULL" was proceeding on a voyage from Rotterdam to New York and that a fire occurred on said vessel approximately 65 miles off Montauk Point, New York, causing those on board to abandon said ship, but deny each and every one of the remaining allegations.

EIGHTH: Claimants deny each and every one of the allegations contained in Article "SEVENTH" of the petition.

NINTH: Claimants deny each and every one of the allegations contained in Article "EIGHTH" of the petition.

TENTH: Claimants deny that petitioner is entitled to the benefit of limitation of or exoneration from liability under the laws of the United States as alleged in Article "NINTH" of the petition, and that petitioner has valid defenses to the claims filed by claimants either on the facts or the law.

ELEVENTH: Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in Article "TENTH" of the petition.

TWELFTH: Claimants admit the allegations contained in Article "ELEVENTH" of the petition.

THIRTEENTH: Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in Article "TWELFTH" of the petition as amended, except that claimants admit that their attorneys stated that they represened Mr. and Mrs. Jan A. Driesprong and their daughter, Wilhelmina Driesprong.

FOURTEENTH: Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in Article "THIRTEENTH" of the petition as amended.

FIFTEENTH: Answering Article "FOURTEENTH" of the petition, claimants admit the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but deny that all of the premises of the petition are true.

FURTHER ANSWERING THE PETITION CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF:

SIXTEENTH: Claimants repeat and reallege the allegations of Articles "FIRST" through "FIFTEENTH" of this Answer.

SEVENTEENTH: At all times hereinafter mentioned, petitioner was the owner of the M. S. "BLACK GULL" which vessel was engaged in the common carriage of passengers and their personal effects on, among others, the waters of the North Atlantic Ocean between, among others, the ports of Rotterdam, Antwerp and New York.

EIGHTEENTH: Petitioner failed to furnish a seaworthy vessel, to wit the M. S. "BLACK GULL", to the charterers, Black Diamond Steamship Corp., with knowledge that said charterers would carry passengers and naphthalene on said ship. By reason of the unseaworthiness of said vessel, a fire occurred on said ship in the North Atlantic Ocean on July 18, 1952, while approximately 65 miles off Montauk Point, New York, and was eventually gutted by said fire causing claimants to abandon the ship; causing claimants to suffer personal injuries and loss of personal effects, all solely by reason of the negligence and with the actual fault, privity or knowledge of the petitioner as herein set forth.

NINETEENTH: By reason of the wrongful acts, neglect and fault of the petitioner, its officers, agents and servants in the construction, equipment, manning, management and navigation of the M. S. "BLACK GULL" and in the management of her equipment, tackle, etc., including but not limited to the following particulars, the claimants herein suffered personal injuries and loss of personal effects which were not in any degree caused by any fault, neglect or want of care on the part of claimants herein but were solely and entirely caused by the wrongful acts, neglect and fault of the petitioner, its officers, agents and servants and with its

privity and knowledge. The following particulars, among others, will be pointed out at the trial:

the M. S. "BLACK GULL" sailed from the port of Rotterdam in an unseaworthy and unsafe condition, in that said vessel was improperly equipped, designed and constructed without proper regard for fire prevention, fire fighting equipment and protection from fire, and had an inadequate and defective fire alarm system; in that the fire fighting equipment was defective, not in proper condition and inadequate; in that the fire boxes of said vessel were improperly designed and placed for the proper protection of the passengers against disaster by fire and the crew not properly instructed in their use; in that the fire detection system of the vessel was improper, insufficient, defective and not properly manned and operated; the electrical system, the emergency lighting system, electric control and communication system of the vessel were improperly placed, defective and without protection against fire; in that specially trained fire crews were not organized among the crew; in that fire drills were not previously held without warning to the crew and passengers; in that the electrical fire alarm system was not tested at proper intervals; in that the vessel was not equipped with sufficient fire hoses on the sides of the outside decks of the vessel, and in that there was an insufficient supply of life jackets for passengers.

FURTHER ANSWERING THE PETITION, CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF.

TWENTIETH: Claimants repeat and reallege the allegations contained in Articles "FIRST" through "NINETEENTH" of this Answer.

TWENTY-FIRST: At all times hereinafter mentioned, the M. S. "BLACK GULL" was provisioned by the petitioner, and her officers and crew were all employees of the petitioner, and said vessel was under charter to the Black Diamond

Steamship Corp., having its principal office at 39 Broadway, Borough of Manhattan, City and State of New York.

TWENTY-SECOND: Said vessel had for some time past on previous voyages and while owned by said SKIBS A/S JOLUND and under charter to the Black Diamond Steamship Corp., carried deck cargoes of naphthalene and passengers from Rotterdam and Antwerp to east coast United States ports.

TWENTY-THIRD: The petitioner, its master, superintendent or managing agent knew that the M. S. "BLACK GULL", while under charter to the Black Diamond Steamship Corp., for some time past had been carrying naphthalene in large quantities as a deck cargo together with passengers, and that such cargo and passengers would be carried by said vessel on the voyage during which this disaster occurred.

TWENTY-FOURTH: The petitioner, having knowledge that its ship would carry passengers and naphthalene in large quantities, through its master, superintendent or managing agent was negligent in the following respects:

(a) permitting the charterer to carry large quantities of naphthalene as deck cargo without warning the passengers at the time of their embarkation;

(b) permitting carriage of naphthalene as deck cargo without taking proper safeguards to properly stow such cargo, to keep it moist, to protect it from heat, the rays of the sun, or otherwise protect it from the possibility of fire;

(c) permitting carriage of naphthalene as deck cargo without taking proper safety measures to protect it from drums of explosive chemicals;

(d) permitting carriage of naphthalene as deck cargo and stowing it in such a manner that certain fire fighting equipment was not available for use and other fire fighting equipment could not be efficiently used;

(e) permitting carriage of naphthalene as deck cargo without carrying or having available for immediate use a chemical agent effective in the extinguishing of a naphthalene fire;

(f) failure to hold lifeboat drills, fire fighting drills and other evolutions with respect to safety of life at sea among the crew and passengers; and

(g) failure to maintain, in view of the inflammable and dangerous nature of the deck cargo, a proper fire watch of the deck cargo.

TWENTY-FIFTH: All and singular, the provisions of this Answer are true.

WHEREFORE, claimants pray that their claims herein be allowed; that the petition herein be denied; and that this Court grant claimants such other and further relief as in law they may be entitled to receive.

ABBERLEY, KOOIMAN & AMON,
Proctors for Claimants,
55 Liberty Street,
New York 5, N. Y.

(Verified by John J. Abberley, attorney, November 24, 1952.)

Answer of Kaare B. Blixt

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The answer of KAARE B. BLIXT to the Petition and Amended Petition, respectfully shows:

FIRST: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs FIRST, FOURTH, ELEVENTH, TWELFTH and THIRTEENTH of the petition and amended petition.

SECOND: Denies each and every allegation contained in paragraphs THIRD, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH and TENTH of the petition and amended petition.

WHEREFORE, claimant prays that this Court will adjudge that the petitioner is liable to the full extent of loss, damage or injury arising out of or in consequence of the occurrence of the fire aboard the Motorship BLACK GULL referred to in the petition and amended petition and that it be adjudged that the petitioner is liable for full damages without limitation or value of petitioner's interest in the Motorship BLACK GULL and pending freight at the time in question, and that a decree may be entered charging and holding said petitioner liable to the full extent of the claims filed in the above entitled proceedings.

That the claimant may have such other and further relief as the justice of the cause may require.

JACOB RASSNER
Proctor for Kaare B. Blixt
220 Broadway
New York 38, N. Y.

(Verified by Jacob Rassner, Attorney, September 25, 1952.)

Answer of Olav Karlsen

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Claimant, OLAV KARLSEN, having duly filed a claim herein now answers the petition of SKIBS A/S JOLUND, by his attorney HERMAN E. COOPER, upon information and belief as follows:

1. Claimant admits that petitioner was and it is owner of the Motor Ship Black Gull and denies information and knowledge sufficient to form a belief as to the remaining facts alleged in paragraph "FIRST" of the petition.

2. Claimant denies information and knowledge sufficient to form a belief with respect to the allegations of paragraph "SECOND" of the petition.

3. Claimant denies all the allegations in paragraph "THIRD".

4. Claimant admits that the Motor Ship Black Gull was registered and operated under the Norwegian flag as a cargo vessel and denies sufficient information and knowledge to form a belief with respect to the remaining allegations in paragraph "FOURTH".

5. Claimant denies all the allegations alleged in paragraph "FIFTH" of the petition.

6. Claimant denies the allegations in paragraph "SIXTH" except that on the said date, the Black Gull was proceeding on a voyage from Rotterdam to New York and that while the vessel was approximately 65 miles off Montauk Point, a fire commenced; that the flames spread rapidly and that the ship was abandoned.

Answer of Olav Karlsen

7. Claimant denies the allegations of paragraphs "SEVENTH" and "EIGHTH" of the petition.

8. Claimant denies such allegations as are made as to valid defenses and opposes petitioner's claim or exoneration in paragraph "NINTH" of the petition, opposes petitioner's claim or exoneration in paragraph "NINTH" of the petition, and similarly opposes the relief sought in paragraph "TENTH".

9. Plaintiff denies the allegations set forth in paragraph "ELEVENTH" except that such affidavits were so filed.

10. Plaintiff admits allegations of paragraph "TWELFTH" but denies sufficient information and knowledge on which to base a belief with respect to the allegations of paragraph "THIRTEENTH".

11. Claimant denies the allegations of paragraph "FOURTEENTH" of the petition.

WHEREFORE, claimant prays that an order of this Court issue denying the relief requested by petitioner, and dismissing the petition therein together with costs and disbursements herein; and that the relief sought by claimant in his claim duly filed in this Court may be granted together with costs and disbursements therein.

Dated: New York, N. Y., December 18th, 1952.

HERMAN E. COOPER,
Attorney for Claimant-Respondent,
Office and P. O. Address,
No. 225 Broadway,
New York 7, N. Y.

(Verified by Richard Gyory, Attorney, December, 1952.)

Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

INTERROGATORIES propounded by Petitioner SKIBS A/S JOLUND to claimants AMERICAN SMELTING & REFINING Co., and all other claimants listed in Schedule A attached to said claimant's answer; and to claimants MARIA ANGELINA VERBEEK, MAURICE VERBEEK, and SIMONE VERBEEK; and to claimant WURTTEMBERGISCHE etc. * * *, to be answered by each and all of said claimants within fifteen days in writing under oath, pursuant to Rule 31 of the General Rules in Admiralty of the United States Supreme Court:

1. Do claimants allege or contend that the BLACK GULL was not seaworthy, and if so in what manner and respect and why is said vessel alleged to have been unseaworthy?

2. Do claimants allege or contend that the BLACK GULL was not tight, staunch and strong, and if so in what manner and respect and why is said vessel alleged not to have been tight, staunch and strong?

3. Do claimants allege or contend that the BLACK GULL was not fully manned and equipped, and if so in what manner and respect and why is said vessel alleged not to have been fully manned and equipped?

4. Do claimants allege or contend that the petitioner SKIBS A/S JOLUND failed to use due diligence to make the BLACK GULL seaworthy, and if so in what manner and respect did the petitioner fail to use due diligence?

5. Do claimants allege or contend that the losses and damages to, or destruction of the BLACK GULL or her cargo

and the deaths or injuries to some of her crew and passengers, were caused or contributed to by any fault, neglect, or want of care of the BLACK GULL, or those in charge of her, or of the petitioner, and if so what was each and every fault, neglect, or want of care of the BLACK GULL, or those in charge of the vessel or of the petitioner?

6. Do the claimants allege or contend that the fire on the BLACK GULL on or about July 18th, 1952 was due to the design or neglect of the petitioner SKIBS A/S JOLUND, or was caused or contributed to by the privity, knowledge and fault of the petitioner, or petitioner's agents, servants or employees; and if so what was each and every act or omission of such design, neglect, privity, knowledge or fault, and which of petitioner's officers, directors, agents, servants or employees was guilty of, or caused or contributed to, such design, neglect, privity, knowledge and fault?

7. Do claimants allege or contend that the petitioner breached or violated any statute, rule, regulation or law of any foreign country in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the substance or content of each and every such statute, rule, regulation or law? What is the citation, date, reference, and other identification of such statute, rule, regulation, or law?

8. Do claimants allege or contend that the petitioner breached or violated any custom or usage of any foreign port or country in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the alleged custom or usage, and in what foreign port or country is there such a custom or usage.

9. Do claimants allege or contend that the petitioner breached or violated any statute, rule, regulation, or law of

the United States, or any governmental department or authority in the United States, in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the statute, rule, regulation or law, with a citation and reference thereto sufficient for its identification.

10. Do claimants allege or contend that the petitioner breached or violated any custom or usage of the steamship business or trade in the United States in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the custom and usage.

11. In so far as is known to the claimants what was each and every cause or contributing cause, of fire on the BLACK GULL which occurred on or about July 18, 1952?

12. Did the claimants or any of them make any shipments of naphthalene on vessels of the Black Diamond Steamship Corp., prior to the shipments of naphthalene on that vessel on the voyage on which the fire occurred on July 18, 1952? If so (a) when, where, and on what vessels did the claimants make such shipments, and (b) did the claimants know that such shipments were to be carried, and were carried, on the deck of said vessels.

13. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL, were at fault or negligent with respect to the loading of cargo on the BLACK GULL for the voyage on which the fire occurred on July 18, 1952, and if so what was each and every respect in which there was such fault or negligence?

Interrogatories

14. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL were at fault or negligent with respect to the stowage of cargo on the BLACK GULL for the voyage on which the fire occurred on July 18, 1952, and if so what was each and every respect in which there was such fault or negligence?

15. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL, were at fault or negligent with respect to the custody of the cargo on the BLACK GULL for the voyage on which the fire occurred on 18 July 1952, and if so what was each and every respect in which there was such fault or negligence?

16. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL, were at fault or negligent with respect to the care of the cargo on the BLACK GULL for the voyage on which the fire occurred on 18 July 1952, and if so what was each and every respect in which there was such fault and negligence?

17. Did the claimants or any of them have an agent, representative, surveyor or employee of any kind, on board the BLACK GULL while the cargo which is the subject of this action was being loaded; and if so who was that agent, representative, surveyor or employee, and which claimant or claimants did he represent or by which was he employed?

18. Do the claimants or any of them allege or contend that cargo was lost or damaged (a) at the loading port, or

(b) while the BLACK GULL was at sea, or (c) while the BLACK GULL was at any port of discharge, and if so at what port?

19. Did the claimants or any of them, or any agent, servant or employee of the claimants or the shippers tally the cargo, and if so was such tally (a) in the hold of the vessel, or (b) on the quay, or (c) at some other point or place and if so at what other point or place?

New York, July 30, 1954.

Yours, etc.,

PYNE, LYNCH & SMITH
Proctors for Petitioner
116 John Street
New York 38, N. Y.

To:

BIGHAM, ENGLAR, JONES & HOUSTON, ESQS.,
Proctors for Claimants
99 John Street
New York 38, N. Y.

Answers to Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

AMERICAN SMELTING & REFINING COMPANY AND THE OTHER CLAIMANTS LISTED IN SCHEDULE A ANNEXED TO SAID CLAIMANTS' ANSWERS AND OF WURTTEMBERGISCHE UND BADISCHE VEREINIGTE VERSICHERUNGSGESELLSCHAFTEN ANSWERING THE INTERROGATORIES PROPOUNDED TO THEM BY PETITIONER, ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:

1. Claimants do allege and contend that the "BLACK GULL" was not seaworthy for the voyage described in the petition in the following respects:

(a) in that she was so loaded and stowed that she could not lawfully complete the voyage contracted for in the bill of lading;

(b) in that she was so loaded and stowed as to present a serious and immediate danger of damage to her and to her cargo by fire;

(c) in that she was not properly equipped and supplied to minimize or overcome the danger presented by her manner of stowage;

(d) in that by reason of her manner of stowage, her holds and other parts of the ship in which goods were stowed were not fit and safe for their reception, carriage and preservation;

(e) in that she was loaded and stowed in contravention of safe and proper practices prevailing both in her ports of loading and in her intended ports of discharge;

(f) in that she was loaded and stowed in contravention of the applicable statutes and regulations of her ports of loading.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

2. Claimants allege and contend that the "BLACK GULL" was not tight, staunch and strong in the respects specified in answer to the First Interrogatory.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

3. Claimants allege and contend that the "BLACK GULL" was not fully equipped in the respects specified in answers to the First Interrogatory.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

4. Claimants allege and contend that petitioner failed to use due diligence to make the "BLACK GULL" seaworthy in the following respects:

(a) in that it, being a common carrier, failed and omitted to secure that the "BLACK GULL" was so loaded and stowed that she could lawfully complete the voyage contracted for in the bill of lading;

(b) in that it, being a common carrier, failed and omitted to secure that the "BLACK GULL" was so

loaded and stowed as not to present a serious and immediate danger of damage to her and to her cargo by fire;

(c) in that it, being a common carrier, failed and omitted to secure that the "BLACK GULL" was properly equipped and supplied to minimize or overcome the danger presented by her manner of stowage;

(d) in that it, being a common carrier, failed and omitted to secure that by reason of her manner of stowage, her holds and other parts of the ship in which goods were stowed were fit and safe for their carriage and preservation;

(e) in that it, being a common carrier, failed and omitted to secure that she was loaded and stowed in conformity with safe and proper practices prevailing both in her ports of loading and in her intended ports of discharge;

(f) in that it, being a common carrier, failed and omitted to secure that she was loaded and stowed in conformity with the applicable statutes and regulations of her ports of loading.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

5. Claimants allege and contend that the losses and damage to their cargo were caused or contributed to by the "BLACK GULL" and those in charge of her, and the petitioner, in the respects specified in answer to the Fourth Interrogatory.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any

of the evidence which may be adduced by any of the parties to this proceeding.

6. Claimants allege and contend that the fire on the "BLACK GULL" on or about July 18, 1952, was due to the design or neglect of petitioner, and was caused or contributed to by the privity, knowledge and fault of the petitioner and of its agents, servants and employees, in the respects specified in answer to the Fourth Interrogatory. The officers, directors, agents, servants and employees of petitioner who were guilty of, or caused or contributed to, such design, neglect, privity, knowledge and fault were such of petitioners, officers, directors, agents, servants and employees as were charged with the duties in the discharge of which petitioner failed, as alleged in answer to the Fourth Interrogatory. Pending receipt of petitioner's answers to the interrogatories propounded to petitioner by these claimants, these claimants are not in a position to supply their names or to describe them more particularly.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

7. Claimants allege and contend that petitioner breached and violated statutes, rules and regulations of the Kingdom of Belgium and of the Kingdom of The Netherlands in connection with the loading and stowage of the "BLACK GULL" and in connection with the "BLACK GULL" on the voyage on which the fire of July 18, 1952 occurred. The substance and content of the statutes, rules and regulations which claimants allege and contend the petitioner breached and violated are those laws, rules and regulations relating to shipping and to the carriage of goods and passengers which require that naphthalene, when stowed on deck, shall be stowed under cover or covered, and those laws, rules and regulations relating to shipping and to the carriage of goods

and passengers which require, in general, that vessels departing from the ports of those countries shall be seaworthy, properly loaded and stowed and provided with all proper, necessary, appropriate and usual safeguards against the outbreak of fire on board. No one of these claimants is a member of the Bar of the Kingdom of The Netherlands or of the Bar of the Kingdom of Belgium and claimants are presently unable to give citations, dates, references or other identification of such statutes, rules, regulations or laws, but they expect in due course to adduce evidence of members of the Bar of those countries who, they believe, will be able to supply such identification.

8. Claimants allege and contend that petitioner breached and violated customs and usages of the Kingdom of The Netherlands and of the Kingdom of Belgium and of the ports of Rotterdam and Antwerp in connection with the loading and stowage of the "BLACK GULL" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred in that it permitted the stowage and carriage of naphthalene on deck uncovered; in that it caused or permitted the vessel to depart from those ports in an unseaworthy condition, improperly loaded and stowed, and not provided with all proper, necessary, customary and usual safeguards against the outbreak of fire on board.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

9. Claimants allege and contend that the petitioner breached and violated the statutes, rules, regulations and laws of the United States in connection with the loading and stowage of the "BLACK GULL" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred in that it permitted the vessel to clear from the ports of Antwerp and Rotterdam for United States ports

in an unseaworthy condition improperly loaded and stowed and not provided with all proper, necessary, customary and usual safeguards against the outbreak of fire on board; and furthermore, but without limiting the generality of the foregoing, in that it permitted the vessel to clear from said ports for United States ports loaded in contravention of the requirements of the Regulations of the United States Coast Guard governing the transportation of explosives, etc. on board vessels (46 C. F. R. part. 146.)

10. Claimants allege and contend that petitioner breached and violated customs and the usages of the steamship business or trade in the United States in connection with the loading and stowage of the "BLACK GULL" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred in the following respects:

It permitted the vessel to clear from the ports of Antwerp and Rotterdam for United States ports in an unseaworthy condition, improperly loaded and stowed and not provided with all proper, necessary, customary and usual safeguards against the outbreak of fire on board; and furthermore, but without limiting the generality of the foregoing, in that it permitted the vessel to clear from said ports for United States ports loaded in contravention of the requirements of the Regulations of the United States Coast Guard governing the transportation of explosives, etc. on board vessels (46 C. F. R. part. 146).

11. None of these claimants was on board the "BLACK GULL" on the voyage on which the fire occurred on or about July 18, 1952, and none of these claimants therefore has any knowledge derived from personal observation as to the cause or causes of the said fire. In so far as claimants have been able to obtain information subsequent to the fire, they are informed, and believe, that the fundamental cause of the fire was the negligent stowage on the deck of the "BLACK GULL" of a large quantity of bagged naphthalene without

any covering, and that the outbreak of fire which they are informed was in that stow of bagged naphthalene, was brought about by the exposure of the highly inflammable naphthalene to elements which caused its ignition.

12. The information sought by this interrogatory is irrelevant and immaterial, and claimants object and except to answering it.

13, 14, 15 and 16. See answers to interrogatories No. 4.

17. Claimants' proctors are not presently in the possession of information with which to answer this interrogatory, but have entered into correspondence to obtain the information with which to answer it. As soon as the information is received it will be furnished by supplemental answer.

18. Claimants allege and contend that their cargo was lost or damaged while the "BLACK GULL" was at sea. They further allege and contend that certain additional loss or damage may have occurred to it at the port of New York or at the port of Baltimore, but they further allege and contend that any such additional loss or damage at those ports was the direct result of occurrences while the "BLACK GULL" was at sea.

19. Claimants' proctors are not presently in the possession of information with which to answer this interrogatory, but have entered into correspondence to obtain the information with which to answer it. As soon as the information is received it will be furnished by supplemental answer.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants
Office & Post Office Address
99 John Street
New York 38, N. Y.

(Verified by John W. R. Zisgen, attorney, September 22, 1954.)

Exception to Answers to Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Petitioner SKIBS A/S JOLUND excepts and objects to the answers of the claimants American Smelting & Refining Co., et al, verified 22 September 1954, on the following grounds:

Answer to Interrogatory 1: Subdivisions (a), (b), and (d) claimants do not state in what manner or respect or why they allege or contend the loading and stowage of the BLACK GULL was improper, wrong, or unseaworthy. Subdivision (c) claimants do not state in what manner or respect or why the BLACK GULL was not properly equipped and supplied, or what claimants allege or contend was improper or wrong with respect to the vessel's equipment or supplies. Subdivision (e) claimants do not state what the safe and proper practices are which allegedly were contravened. Subdivision (f), claimants do not state what statutes or regulations are alleged to have been contravened, and do not give any references to or identification of any statutes or regulations, and do not state the content or substance of such statutes and regulations.

Answer to Interrogatory No. 2: Claimants do not state in what manner or respect or why the BLACK GULL is alleged not to have been tight, staunch, and strong; and the answer is insufficient, vague and indefinite for the same reasons as stated in the foregoing exceptions to the answer to Interrogatory No. 1.

Answer to Interrogatory No. 3: Claimants do not state in what manner or respect or why the BLACK GULL is

alleged not to have been fully equipped, or what allegedly was lacking or improper in her equipment; and the answer is insufficient, vague and indefinite for the same reasons as stated in the foregoing exceptions to the answer to Interrogatory No. 1.

Answer to Interrogatory No. 4: Subdivisions (a), (b), and (d), claimants do not state in what manner or respect or why the loading and stowage of the BLACK GULL is alleged or contended to have been unlawful, improper, dangerous, unfit, or unsafe. Subdivision (c), claimants do not state in what manner or respect or why the BLACK GULL was not properly equipped or supplied. Subdivision (e), claimants do not state what the safe and proper practices are which allegedly prevailed at loading and discharge ports and which petitioner allegedly failed to secure. Subdivision (f), claimants do not state what statutes and regulations the loading and stowage of the BLACK GULL was not in conformity with, and do not give any reference to or identification of any statutes or regulations, and do not state the content or substance of such statutes or regulations.

Answer to Interrogatory No. 5: Claimants do not state any specific alleged fault which caused or contributed to damage to claimants' cargo. Claimants should state and be required to state specific alleged faults in loading, stowage, equipping and supplying of the vessel. Petitioner repeats the foregoing exceptions herein to the answer to the fourth interrogatory.

Answer to Interrogatory No. 6: The answer is in effect no answer at all. Claimants have failed to state, and should be required to state, specific acts which claimants allege or contend constituted design or neglect of the petitioner, and petitioner is entitled to specifications and statement by claimants of each and every alleged act or omission of the petitioner which claimants alleged caused the

fire, and which constituted design or neglect. Claimants' answer to the fourth interrogatory, referred to and incorporated in the answer to this sixth interrogatory, is excepted to on the grounds hereinbefore stated.

Answer to Interrogatory No. 7: Claimants' answer is insufficient, vague, and indefinite; does not state or identify by citation, reference, or otherwise, any statute, rule, or regulation, nor the content or substance thereof. Claimants, alleging foreign law, are and should be required to plead and identify such law with definiteness, and citation of any statute, rule or regulation which claimants rely upon. Claimants' explanation or excuse for their answer that they are not members of the bar of the Kingdoms of Netherlands and Belgium should be stricken out as immaterial subterfuge.

Answer to Interrogatory No. 8: Claimants' answer is insufficient, vague, and indefinite; does not state what custom or usage claimants rely on, or what any such custom or usage is alleged to require with respect to loading and stowage. Claimants are, and should be required to state clearly and with definiteness the content or substance of the custom and usage to which they refer.

Answer to Interrogatory No. 10: Claimants do not state in what manner or respect the BLACK GULL was unseaworthy and improperly loaded and stowed, and not provided with proper necessary customary and usual safeguards against outbreak of fire. Claimants do not state, and should be required to state, clearly and with definiteness, each custom and usage alleged to have been breached or violated by the petitioner.

Answer to Interrogatory No. 11: Claimants do not state, and should be required to state and name "the elements" which they allege or contend did in fact cause the ignition of the naphthalene, or if they can not so state, what ele-

ments could have or might have caused the ignition of the naphthalene.

Answer to Interrogatory No. 12: Claimants' refusal to answer this interrogatory is unwarranted. Claimants' time to except and object to the interrogatory has long since expired. The time of claimants to answer this and the other interrogatories at claimants' request was extended, but claimants did not request or obtain any extension of time to except or object, and the extended time to answer has also expired. Further, petitioner alleges that the interrogatory concerns relevant and material matter.

Answers to Interrogatories Nos. 13, 14, 15 and 16: Petitioner repeats and incorporates herein the same exceptions and objections set forth in petitioner's foregoing exceptions to the answer to interrogatory No. 4.

Answers to Interrogatories Nos. 17 and 19: Claimants have completely failed to answer these interrogatories.

29 September 1954

Yours etc.,

PYNE, LYNCH & SMITH,
Proctors for Petitioner,
116 John Street,
New York 38, New York.

Order

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Petitioner SKIBS A/S JOLUND having on July 30, 1954 filed and served interrogatories addressed to American Smelting & Refining Company, et al, claimants who filed claims for damage to cargo on board the motor ship BLACK GULL at the time of the fire referred to in the petition, and the said claimants having on 22 September 1954 filed and served answers to some of the said interrogatories, and having stated in said answers that supplementary answers would be served furnishing the information requested in petitioner's interrogatories numbers 17 and 19, but no such supplementary answers having as yet been filed or served; and the petitioner having on 29 September 1954, filed exceptions to the answers of the said cargo claimants; and the said exceptions having come on to be heard on 25 January 1954; and the petitioner having appeared and been heard by its proctors Pyne, Lynch & Smith (Warner Pyne); and the said cargo claimants having appeared and been heard by its proctors Bigham, Englar, Jones & Houston (John W. R. Zisgen); and due deliberation having been had,

Now, on motion of Pyne, Lynch & Smith, proctors for petitioner, it is

ORDERED that the exceptions of the petitioner to the answers of American Smelting & Refining Company, et al, claimants. to petitioner's interrogatories be and they hereby are sustained; and it is further

ORDERED that the claimants, American Smelting & Refining Company, et al, within ten days after the entry of

this order and the service of a copy thereof on their proctors file answers as fully and completely as possible to petitioner's interrogatories No. 17 and 19, and with respect to such portion, if any, as claimants are unable within said ten day period to answer, claimants designate exactly what part or portion of said interrogatories claimants can not answer within said ten day period and also state when claimants expect to be able to furnish full and complete answers, any part or portion not answered within said ten day period to be subject to the further order of this Court; and it is further

ORDERED that said claimants within said ten day period answer petitioner's Seventh Interrogatory and amend subdivisions (a) and (b) of their answers to interrogatories Nos. 1 and 4 so as to state as accurately and completely as is possible upon the basis of their present knowledge and information, every foreign law, statute, rule or regulation on which claimants rely or which claimants allege or contend was breached or violated by the petitioner and in so far as they may later obtain knowledge or information as to additional or different foreign laws, statutes, rules or regulations on which they rely or which they contend were breached or violated by the petitioner it is further ordered that they shall, within a reasonable time after acquiring such additional knowledge or information, and at all events not less than ninety days prior to commencement of trial, furnish it to petitioner by supplemental answer to these interrogatories; and it is further

ORDERED that said claimants within said ten day period answer fully and completely petitioner's interrogatories No. 8 and 10 and in said answers state fully, completely and clearly each and every custom or usage both foreign and domestic, and if foreign what port, place or country is involved, of the steamship business or trade, or the business or trade of operating ocean going vessels between foreign

and United States ports which claimants allege or contend was breached or violated by the petitioner; and it is further

ORDERED that within said ten day period said claimants answer fully and completely interrogatories Nos. 1 to 6, both inclusive, and 13 to 16, both inclusive, and in said answers state in what respects, particulars, and details claimants allege the BLACK GULL was not seaworthy, or not tight, staunch or strong, and if her alleged unseaworthiness was in her hull in what part or portion and why and if in her supplies or equipment, what supplies and equipment and why; and if claimants allege or contend that the BLACK GULL's stowage of cargo was improper, unlawful, wrongful, or dangerous stowage, in what respect and particular and why; and if it is claimed that naphthalene stowed and carried on deck was improperly, wrongfully, or unlawfully stowed because not covered, in what manner and how and with what kind, type, or material claimants allege or contend the said deck cargo of naphthalene should have been covered and stowed; and if it is claimed the petitioner failed to use due diligence to make the "BLACK GULL", seaworthy, or was negligent, in what respects, particulars and details claimants allege or contend there was failure to use due diligence and negligence; and it is further

ORDERED that claimants answer petitioner's interrogatory No. 12 and state which of them if any, made prior shipments of naphthalene cargoes on Black Diamond Steamship Corp. vessels, and that those claimants who made such shipments of naphthalene cargoes answer subdivisions (a) and (b) of said Interrogatory No. 12.

(Sd) ALEXANDER BICKS
U. S. D. J.

Dated:
February 23, 1955
New York, New York

Supplemental Answers of Claimants to Certain Interrogatories Propounded by Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

American Smelting & Refining Company and the other claimants listed in Schedule A annexed to said claimants' answer; and Wurttembergische und Badische Vereinigte Versicherungsgesellschaften A.G., supplementing the answers heretofore filed by them to the interrogatories propounded to them by petitioner, allege, upon information and belief, as follows:

1. Claimants do allege and contend that the "BLACK GULL" was not seaworthy for the voyage described in the petition, in the following respects:

(a) in that she was so loaded and stowed that she could not lawfully complete the voyage to United States ports contracted for in the bills of lading; in that she was stowed in contravention of the provisions of the Coast Guard Regulations relating to the transportation of explosives and other dangerous goods on board vessel (46 C. F. R., Part 146), because she carried bags of naphthalene stowed on deck, secured merely by manila rope netting whereas said regulations require that bagged naphthalene stowed on deck be covered or be under cover.

b) in that she was so loaded and stowed as to prevent a serious and immediate danger of damage to her and to her cargo by fire, because she carried bagged naphthalene stowed on deck, secured only by manila rope netting, which exposed said cargo of bagged naphthalene to the heat of the direct rays of the sun; to contact with sparks emanat-

ing from the vessel's funnels; to lightning; to lighted cigarettes, pipe tobacco and matches at the hands of passengers or crew; to sparks of static electricity; to sparks generated by contact of metals; and to any other source of possible ignition, contact with which might have been minimized or prevented by such covering as is contemplated by the Coast Guard Regulations hereinbefore mentioned.

c) in that she was not properly equipped and supplied to minimize or overcome the danger presented by her manner of stowage; in that she was not adequately supplied with sandboxes or other safe contrivances for the extinguishment of matches, cigarettes, cigars and pipe tobacco; in that the deck space utilized for the stowage of bagged naphthalene on deck was not covered by a deck erection nor was the stow covered with awnings or dunnaging, to ward off sources of potential ignition; in that said space was not fenced off or marked off from the passenger quarters of the vessel, nor posted with adequate warning signs forbidding passengers to enter upon or approach the vicinity of the portions of her deck space on which her deck cargo of naphthalene was stowed; and in that no fire watch was posted or maintained in the vicinity of the deck stow of bagged naphthalene to prevent its ignition or to make more certain the immediate detection of fire therein.

d) in that, by reason of the deficiencies hereinbefore mentioned, and the dangers thereby presented, her holds and other parts of the ship in which goods were stowed were not fit for their carriage and preservation.

e) in that, by reason of the foregoing deficiencies and the dangers thereby presented, she was loaded and stowed in contravention of safe and proper practices prevailing both in her ports of loading and in her intended ports of discharge, and was therefore unseaworthy; and due diligence was not exercised to make her seaworthy.

f) in that, by reason of the foregoing deficiencies and the dangers thereby presented, she was loaded and stowed in an unseaworthy manner resulting from lack of due diligence, in contravention of the "International Convention for the Unification of Certain Rules Relating to Ocean Bills of Lading", ratified by the Kingdom of The Netherlands in 1931, effective November 15, 1931, and ratified by the Kingdom of Belgium in 1930, effective June 2, 1931, both of which remained effective as to both of said sovereign states on the dates on which said vessel loaded her cargo at Rotterdam, Kingdom of The Netherlands and at Antwerp, Kingdom of Belgium and in further contravention of the Carriage of Goods by Sea Act, 46 U. S. C. sec. 1300 ff., and of the laws and regulations of the Kingdom of the Netherlands hereinafter referred to.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

2. Claimants do allege and contend that the "BLACK GULL" was not tight, staunch and strong in the respects specified in answer to the First Interrogatory. The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

3. Claimants do allege and contend that the "BLACK GULL" was not fully manned and equipped in the respects

specified in answer to the First Interrogatory; and, in addition, in that her officers and crew were ignorant of the proper method of stowing naphthalene on deck so as to protect it from the danger of fire, and of the proper measures to take to minimize or overcome such danger. The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

4. Claimants do allege and contend that petitioner failed to use due diligence to make the "BLACK GULL" seaworthy, in the following respects:

a) in that it, being a common carrier, caused or permitted bags of naphthalene to be stowed on her deck secured merely by manila rope netting, and failed to cause said naphthalene to be covered or stowed under cover, which made it impossible for the said vessel lawfully to complete the voyage contracted for in the bills of lading because such stowage was in contravention of the Coast Guard regulations;

b) in that it, being a common carrier, caused or permitted bags of naphthalene to be stowed on her deck secured only by manila rope netting, and not otherwise covered, or stowed under cover, thereby exposing said stow of bags of naphthalene to the sources of ignition mentioned in part (b) of the answer to the First Interrogatory;

c) in that it, being a common carrier, failed and omitted to supply the vessel, with the contrivances mentioned in part (c) of the answer to the First Interrogatory to minimize the danger presented by her manner of stowage; failed and omitted to provide structural erections having perma-

nent openings to the atmosphere or awnings or dunnaging to protect said stow of naphthalene from the elements and from the direct rays of the sun; failed and omitted to shut off the portion of her deck on which said bagged naphthalene was stowed from access from the passenger quarters; failed and omitted to post adequate warning signs forbidding passengers to enter upon or approach the vicinity of said stow; failed and omitted to maintain a fire watch in said vicinity to prevent ignition of the stow of bagged naphthalene or to make more certain the immediate detection of fire therein; and failed and omitted to man the vessel with officers and crew aware of the proper method of stowing naphthalene on deck and of the proper measures to take to minimize or overcome the dangers of such stowage.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

5. Claimants do allege and contend that the losses and damages to their cargo were caused or contributed to by the fault of petitioner and the "BLACK GULL" and those in charge of her, in the respects set forth in their answers to the Fourth Interrogatory.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

6. Claimants do allege and contend that the fire on the "BLACK GULL" was due to the design or neglect of

petitioner, and was caused or contributed to by the privity, knowledge and fault of petitioner, its agents, servants and employees in the respects specified in their answers to the Fourth Interrogatory. The officers, directors, agents, servants and employees of petitioner who were guilty of, or caused or contributed to, such design, neglect, privity, knowledge and fault were such of petitioner's officers, directors, agents, servants and employees as were charged with the duties in the discharge of which petitioner failed, as alleged in claimants' answers to the Fourth Interrogatory. Pending receipt of petitioner's answers to claimants' interrogatories, claimants are not in possession of knowledge or information as to their names, and cannot describe them more particularly.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

7. Claimants do allege and contend that petitioner breached and violated the statutes, rules, regulations and laws of the Kingdom of Belgium and of the Kingdom of the Netherlands in connection with the loading and stowage of the "Black Gull" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred. The substance and contents of the statutes, rules, regulations and laws which claimants allege and contend petitioner breached and violated are those relating to shipping and to the carriage of goods and passengers which require that naphthalene, when stowed on deck, shall be stowed under cover or covered, and those which require that vessels departing from the ports of those countries shall be seaworthy, properly manned, equipped and supplied, properly

loaded and stowed, and provided with all proper, necessary, appropriate and usual safeguards against fire on board.

Claimants allege and contend that petitioner violated the provisions of the "International Convention for the Unification of Certain Rules relating to Ocean Bills of Lading" as in force in both of said Kingdoms at the time the "BLACK GULL" loaded at and sailed from their respective ports on the voyage described in the petition; and violated the provisions of the local statutes of each of said Kingdoms, which substantially embodied the provisions of said Convention. Claimants have no knowledge or information as to the citations, references, rules, regulations or laws excepting that the said Convention was signed at Brussels August 25, 1924; was ratified by the Kingdom of the Netherlands in 1931, effective November 15, 1931; and was ratified by the Kingdom of Belgium in 1930, effective June 2, 1931; that such a local statute of the Kingdom of the Netherlands was enacted in 1927; and that such a local statute of the Kingdom of Belgium was enacted November 28, 1928, effective January 22, 1929.

Claimants also allege and contend that petitioner violated the provisions of the Shipping Decree, the Shipping Regulations, and the Rules of the Inspector-General of Shipping of the Kingdom of the Netherlands. Claimants have no knowledge or information as to the citations, references, etc. excepting that reference has been made to them in the following terms:

Shipping Regulations
Appendix XVII to Shipping Decree
Articles 91 to 96 of Shipping Decree
Article 94 par. 13 of Shipping Decree
Shipping Decree, 1952

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to

and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

8. Claimants allege and contend that petitioner breached and violated customs and usages of the Kingdom of the Netherlands and of the Kingdom of Belgium and of the ports of Rotterdam and Antwerp in that petitioner caused or permitted the stowage of naphthalene on deck covered only with manila rope netting, whereas by the custom and usage of those countries and ports in relation to the carriage of naphthalene from them to United States ports it should have been protected from the elements by structural erections and from the direct rays of the sun by awnings or dunnaging; or should have been stowed under covered erections on the weather deck such as forecastle, bridge house, poop, or deck house having permanent structural openings to the atmosphere; and in that petitioner caused or permitted said vessel to sail from said ports in an unseaworthy condition in the respects specified in their answers to the First and Third Interrogatories, whereas she should have sailed therefrom seaworthy in those respects.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

10. Claimants allege and contend that petitioner breached and violated customs and usages of the steamship trade between ports of the Kingdom of the Netherlands and the Kingdom of Belgium and ports of the United States

in all of the respects specified in their answers to the Eighth Interrogatory.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

12. With the possible exceptions mentioned hereunder, none of the claimants made any shipments of naphthalene on vessels of the Black Diamond Steamship Corporation prior to the voyage described in the petition.

* * *

13 to 16, inclusive. Claimants allege and contend that petitioner, its agents, servants and employees and the master and officers of the "BLACK GULL" were at fault and negligent with respect to the loading, stowage, care and custody of their cargo on the voyage in question in the respects set out in their answers to the First, Third and Fourth Interrogatories.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

17. With the exceptions and possible exceptions mentioned hereunder, none of the claimants had a representative, surveyor or employee on board the "BLACK GULL" while the cargo was being loaded.

The claimants as to whom there is possible exceptions are those mentioned in claimants' answers to the 12th In-

terrogatory. Claimants' proctors are continuing their efforts to obtain the information with which to answer as to these claimants, expect to have definite information within thirty days, and will furnish it when received.

* * *

19. With the exceptions and possible exceptions mentioned hereunder, none of the claimants or shippers tallied the cargo.

The possible exceptions are the claimants named in their answers to the 12th Interrogatory. Claimants' proctors are continuing their efforts to obtain the information with which to answer as to these claimants, expect to have definite information within thirty days, and will furnish it when received.

* * *

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants,
Office & P. O. Address,
99 John Street,
New York 38, N. Y.

(Verified by John W. R. Zisgen, attorney, March 10, 1955.)

Extracts from Opening Statements

• • •

[3] The Court: All right. Who do you think has the burden of proof on the first issue?

Mr. Longley: I suppose if you are referring to cargo and carrier, I think the cargo has.

The Court: You all agree that the first [4] question to be decided is whether the fire was due to the negligence of the shipowner and carrier.

Mr. Longley: That is the primary issue.

• • •

[16] • • • the testimony here will establish that there were nine passangers carried in this midship structure. They were permitted the full reach of the ship in walking about and there is no way of telling—I assume no evidence will be offered—not by us, in any event—as to whether it was a lighted match or a cigar or cigarette butt carelessly thrown into this stow by the passengers or by the crew which started the fire, or whether it was a spark from the funnel. It was one of those things——

• • •

[85] He said that prior to becoming a nautical surveyor he had been at sea for some 20 years with the Netherlands Steamship Company working his way up, apprentice to master, and that during the last six years of that period he had served as master.

His service fell into two general trades. For 14 of his years at sea he was in the trade between Holland the Dutch East Indies, and for the remaining six he had been in the trade between Java and Bengal. He said that he had had experience with naphthalene in the five years after World War II, commencing around 1948, and that during that period he had had to supervise the stowage of naphthalene and give a certificate of proper stowage. In doing that he was acting as an employee of a company whose name he

gives, a very long Dutch name, whose business was to charter steamers and load them with goods for carriage to the United States.

The naphthalene in question he said arived at Rotterdam from Germany in barges and that on the barges it was stowed both below decks and up into the hatchways, and it was in bags.

He said that the bags that were stowed up above the level of the hatches were covered with [86] tarpaulins on those barges, and when asked, "Do you know what the purpose was of covering them with tarpaulins?" his answer was, "They are bag goods and therefore you want to keep it dry. And there is another reason, the goods is considered to be inflammable and you cover it and protect it from fire, spark, etc."

• • •

[88] Mr. Zisgen: "In your opinion how should naphthalene which is carried on deck be stowed on ocean steamers?

"A. I myself have never carried on my ship these bags of naphthalene, because that is a commodity which we never ship to the East Indies, not the raw material.

"Q. But as a nautical surveyor what is your opinion as to the way in which naphthalene in bags carried on deck in ocean steamers should be stowed? A. It must be stowed,—of course, if it is an island deck you would just have to keep the box, the ground tier, free from the deck so that water can flow underneath the cargo stowed there. Then we have to cover it up with tarpaulins just to protect it from water, rain, sea water and from eventual sparks, and maybe from just cigarettes which the people smoke and throw away.

• • •

[93] "Q. Now, in the course of the voyage the passengers were allowed on the main deck of the vessel, were they

not? A. They were never on the main deck because there was deck cargo and they could not get around there.

"Q. Are you sure of that? A. I would not say never, but they had the boat deck and bridge deck to themselves.

"Q. But they may have gone on the main deck at times; is that correct? A. That I cannot say because I have not seen it happen.

• • •

[94] "Q. What language were the signs in the cabins printed in? A. English.

"Q. What language were the signs in the alleyways in? A. English.

"Q. What language were the signs on the mast house in? [95] A. English.

• • •

"Q. Now, you had ashtrays on the tables in the dining room, had you not? A. It was not allowed to smoke in the dining room.

"Q. Where did you smoke when you smoked? A. In my cabin.

"Q. Was there a sign in your cabin just as in the other passengers' cabins? A. No.

"Q. Were you ever aft in the crew's quarters? A. Every day. It is my job to see if everything is in order.

"Q. Were there signs in the crew's quarters saying 'no smoking'? A. Not in the cabins, but in the alleyways.

"Q. In what language were they? [96] A. So far as I can remember they were in Norwegian.

"Q. You told us that passengers were not allowed to smoke in the dining saloon. Where were they allowed to smoke? A. In the cabin and in the smoking saloon.

"Q. Where was the smoking saloon? A. Next door to the dining saloon.

"Q. Can you point it out to me on Jolund Exhibit 1 for identification?"

The witness then pointed to a space labeled "Smoking Room" in the same diagram that Mr. Pyne had theretofore marked with an X for 10, the one that has "Boat Deck" underneath.

"Q. And on this voyage some passengers did smoke, did they not? A. I cannot say, but I take it for granted that there were some amongst them that smoked."

• • •

[97] JOHANNES ADRINUS DRIESPRONG, whose deposition was taken at Rotterdam on August 9, 1955. At page 2:

• • •

MR. J. DRIESPRONG (passenger claimant).

Cross-examination by Mr. Zisgen:

[101] "Q. Do you remember the nationality of any of the other passengers who were with you on the Black Gull? A. Yes.

"Q. Can you tell me so far as you recall what the facts were as to that? [102] A. The Dutch passengers were my wife, my daughter and myself, Mr. de Nobel—don't know his Christian name—and Mr. Spanderman. They were Dutch. As to the Leesons, I think Mr. Leeson is Irish; Mrs. Leeson is Belgian. There was a German young fellow—what was his name now—and one Swiss boy—one German boy. We did not see much of them—well, we saw them but did not speak to them—I don't know their names really.

"Q. So there were: the three of you: you yourself, your wife and daughter, Mr. de Nobel and Mr. Spanderman, who were Dutch; there was Mr. Leeson who was British or Irish; there was Mrs. Leeson, who was Belgian—— A. I think so.

"Q. —there was one young German and one young Swiss. That makes up the nine passengers. A. Yes.

• • •

Deposition of Jacobus de Nobel
Deposition of Peter Spanderman

[103] * * * deposition of Mr. de Nobel, also a passenger.

* * *

"Q. Mr. de Nobel, on or about July 18, 1952, were you a passenger on the SS. Black Gull? A. Yes, I was."

* * *

"Q. During the course of this voyage, Mr. de Nobel, did you become generally familiar with the vessel? A. Well, I only stopped in the neighborhood of [104] my cabin. I never went down to the stern or aft of the ship.

"Q. What decks did you walk on, if any? A. On the boat decks. Well, and I was sitting in the smoking room and just enjoyed myself with talks with all the passengers."

* * *

"Q. Did you go on the maindeck? A. No, I never have been on the maindeck."

* * *

[105] "Q. Do you smoke, Mr. de Nobel? A. Yes, I smoke a lot.

"Q. What do you smoke? A. Nearly always cigarettes.

"Q. Did you smoke in your cabin during the course of the voyage?

* * *

[106] "Q. Did you ever see any members of the crew smoking? A. No, I did not see any."

* * *

* * * deposition of Mr. Spanderman, * * * a passenger, * * *

* * *

[109] "Q. As to the maindeck where the cargo was stowed, in the stern of the vessel, did you ever see any members of the crew smoking in that area? A. I never saw anyone smoking on the after deck."

* * *

Deposition of Peter Spanderman

Cross-examination by Mr. Zisgen.

[110] "Q. Mr. Spanderman, you told us that you had seen cigars and cigarettes thrown down around the bridge on the Black Gull. Can you tell us when you saw that?"

Mr. Pyne: May I call your attention now, your Honor, to this objection—that question clearly says plural—"cigars and cigarettes." If you turn back to what the witness clearly stated before, he saw a cigar and a cigarette—not the plural, so I will object to that question.

The Court: Well, did you object at the time?

Mr. Pyne: I beg your pardon?

The Court: Did you object at the time?

Mr. Pyne: No.

The Court: Then you think that is an objection as to the form?

Mr. Pyne: All right.

Mr. Zisgen: The answer to that question was: "Every day."

Mr. Pyne: May I also have the record show, your Honor, with respect to all of these passengers, of whom portions of their testimony or depositions are being read, that they were all claimants in the limitation proceeding.

• • •

[111] Mr. Pyne: Just a portion of the questions and answers asked of the witness de Nobel. At page 40—this is on his direct examination, your Honor:

"Q. Mr. de Nobel, immediately prior to the time of this fire that occurred, where were you? [112] A. Well, we had had the captain's dinner, and let's say at 10:30 I went up to my room and before undressing myself I went out because my room was very near to the outside, to the gangway outside. And so I may have been for five or ten minutes just

on the deck, just to have a bit of fresh air. Well, and then I went in. In the meantime Mr. Spanderman had undressed himself and was laying on his bed. And then I started to undress myself and I had just my jacket taken out, when the stewardess came up and said to us: gentlemen"—and then he continues with data concerning the fire.

• • •

"Q. • • • Mr. Spanderman, this is also on direct, your Honor— "Where were you immediately prior to the time you were notified that there was a fire? A. I came from the smoking room going up to my cabin, but just before I went to bed I looked out at the sea and then I went to my cabin, where I undressed. And I had just finished undressing when the door was thrown open and the stewardess entered and [112a] said: "Keep it easy, get dressed, the ship is in flame."

• • •

[113] Deposition • • • of JAN P. MULLER (passenger called by petitioner).

• • •

"Q. Now, in July, 1952, were you on board the Steamship Black Gull on a voyage between Europe and the United States, on which a fire occurred on that vessel? A. Yes.

"Q. Where did you board the vessel? A. In Rotterdam.

"Q. And for what purpose, or in what capacity, or why did you board here? A. Oh, just as a passenger."

• • •

[114] "Q. If you saw anyone smoking on the voyage, it must have been outside of your cabin? A. Yes. Oh, yes.

"Q. And outside of their cabin? A. Yes."

• • •

"Q. But you don't recall definitely whether or not you did, is that right? [115] A. That's r[illegible]. I mean I couldn't name anybody exactly, when and how."

• • •

"Q. Were you warned at that time not to smoke on the voyage? A. I don't recall. I don't think so. I mean, the one thing I can remember pertaining to smoking is that sign in my cabin.

"Q. That is the only mention of it that you recall? A. Yes."

Then at page 14:

"Q. Did you learn before the"——

The Court: What did he say about the sign in his cabin?

Mr. Zisgen: He had previously testified, your Honor, on direct examination, that there was a sign in his cabin——

• • •

[116] "Q. Now, while you were on board that vessel, and prior to the time that the fire occurred, did you see or receive any requests or suggestions or instructions in connection with smoking? A. Yes.

"Q. Now what type of data or matter was it that you saw or received? A. Well, I remember a sign that was in my cabin, and which said something about smoking.

"Q. Now, where in your cabin was the sign? A. I believe it was right on the wall over the table, a small table.

"Q. Can you recall what the content—or what was said on the sign, the substance? A. It said in the sense of 'Don't throw cigarettes or butts or burning cigarettes away, or overboard.'"

• • •

[118] "Q. What sort of weather did you have on the voyage? A. I believe it was good weather."

• • •

Deposition of Thomas D. Leeson

[120] * * * Deposition of THOMAS D. LEESON

* * *

[121] "Q. Tell us generally where you would walk about on this ship? A. The deck, coming out from our cabin aft. We could walk there up through the dining room, and higher up, and then, on the main—shall we call it the promenade deck, which was the roof of our cabin. The roofs of our cabin.

"Q. When you were walking about, did you see other people walking on the decks of the ship? A. The other passengers.

"Q. Passengers or crew? A. Well, we—we saw crew.

* * *

[122] "Q. Where did you see the crew or other passengers walk? A. Well, the crew mostly—mostly aft, on the the main deck.

"Q. Did you notice any passengers walking in that area of the ship? A. Only one, to my recollection, who went down on that deck, fore and aft."

* * *

"Q. Tell us, if you can, whether any of these people you saw walking on these decks were carrying anything? [123] A. It's very difficult. I couldn't tell you that."

* * *

"Q. Did you notice any of them smoking? A. No. You mean, the crew?

"Q. Crew or passengers. A. Passengers—we smoked on our own deck.

"Q. Were receptacles provided for smoking on your own deck? A. I didn't see any.

* * *

[125] "Q. Then as you look down from the areaway you walked normally, which we have marked here with the word 'roof'? A. Yes, that is the roof of our cabin.

"Q. That is the promenade deck? A. That is right.

'Q. As you looked down you could see the stowage on the port side? A. Yes.

"Q. Did I understand you to say it was a continuous stow largely of these bags of naphthalene? A. Yes, continuous to more or less within a short distance of the crew's quarters."

• • •

[126] • • • naphthalene extended about the height of the bulwarks? A. Yes.

"Q. Inboard within two or three feet of the hatch coaming? A. Yes.

"Q. As you saw it, it was approximately a solid stow from forward toward the aft on the port side? A. Yes, if you call sacks, ordinary gunny sacks filled with loose crystals, a solid stow, then I am with you.

"Q. I am not talking of anything like brick, but the bags were stowed closely together? A. They were stowed closely together.

• • •

[128] "Q. And the other passengers, you saw them smoking up there?"

That, your Honor, refers to the upper decks and these passengers' housing amidships. A. Yes, I suppose I did, but it wasn't my affair——

"Q. Of course, but you did see them?"

Mr. Pyne then objected, "Let the witness answer, Mr. Longley." And the reporter read the last question and answer. Then the witness gave the answer:

A. Yes, I saw passengers smoking."

• • •

[129] "Q. The smell of naphthalene, I gather from what you said, was very marked when you went on board at Rotterdam, was it not? A. Well, when we got on board

at Rotterdam, after the time necessary to settle into our cabins, then—we began to take noses of this smell.

"Q. Can you tell us during the voyage, as you experienced the hot weather, whether the smell of the naphthalene increased or decreased, or whether it remained the same? A. I have no way of saying. I have no way of answering that question. I have no appreciation of the intensity of the smell of the naphthalene, * * *

* * *

[130] "Q. Explain, please, how you were able to testify as to the appearance of the naphthalene being in crystal form. A. Simply because some of the gunnysacks were broken.

* * *

"Q. Was there exposed naphthalene on the deck from any broken bags or part of the deck where the crew walked? A. To the best of my recollection, that's where I saw the broken sacks, right at the very beginning."

* * *

[131] "Q. Did you notice anyone sweeping or picking up these loose crystals? A. Well, they were swept up in the early [132] morning, I suppose. The crew cleaned the quarters, cleaned the decks in ~~the early~~ morning. But I won't say I actually saw them sweeping up those few crystals.

* * *

"Q. On how many occasions did you notice loose naphthalene crystals on the main deck? A. I only noticed that right at the beginning, the first or second day out, when we were getting our bearings, looking at everything, and we noticed then that there were slopping over in a couple of places—of the crystal—but to say that we saw them day after day, I can't go that far. But there was a slopping out of naphthalene, naked crystals, onto the steel decks."

* * *

Deposition of Mrs. Jeanne Leeson

[133] "Q. Can you give us some idea of what we are talking about? Was this a handful or a bucketful? Was it a large quantity or a small quantity? A. Visible small quantity in a couple of places. Visible small quantities."

• • •

[134] Then MRS. JEANNE LEESON • • •

"Q. Did you at any time ever notice any of the crew or any of the officers smoking? A. We didn't mix with the crew, so I wouldn't know. And the officers smoked after dinner."

Mr. [illegible]ne interjected, "In the dining room?"

The witness answered: "In the dining room or the lounge."

[135] "Q. That is where you saw them smoke? A. Yes."

• • •

"Q. Did you at any time ever notice any of the crew smoking on the main decks? A. No. I didn't take any notice of it.

"Q. Did you notice any of the officers smoking on the main decks? A. No."

• • •

[137] "Q. When you walked up on your deck you looked down and saw the naphthalene below? A. Yes.

"Q. And as you looked down on it you could see a solid stow of bags from the bulwarks into an area two or three feet away from the hatch coamings? A. Yes.

• • •

[138] "Q. As you looked down during the course of the voyage, did you or did you not see any spillage of the crystals? A. Yes.

"Q. Where did you see that spillage? A. On this little gangway that was left.

• • •

Deposition of Mrs. Jeanne Leeson

Mr. Pyne: Continuing on there:

"Q. How many times did you see this spillage? [139] A. Well, a couple of times. We didn't take any more notice of it.

"Q. Did the crew walk on this spillage of crystals? A. No. They kept their decks fairly clean."

• • •

"Q. What would you say was the approximate temperature of the weather you experienced during the voyage? Was it very hot? A. Yes. It was very hot.

"Q. You didn't have occasion to look at a thermometer, I suppose? A. We saw no thermometer • • •

• • •

"Q. Could you give us some estimate? Was it 100 degrees? What would you say? A. Well, being at sea, it would be less than on land • • •

• • •

[140] "Q. Mrs. Leeson, between the time you boarded the ship in Rotterdam on about July 10th, at the time of the fire, on or about July 18th, was the ship moving all the time? A. Oh, no. We had three stoppages in 24 hours. The ship lay still.

"Q. Do you remember the dates, approximately, when the ship stopped? A. About halfway, the 14th, the 15th.

"Q. Did these stoppages all take place in the same day? [141] A. Within the same 24 hours. We also had quite a lot of shorts on board.

"Q. What do you mean by 'shorts'? A. Well, the lights would go out, and bells would ring when they didn't have to ring out and sometimes when we rang for the steward it was definitely something wrong with the electric wiring, or whatever it was.

"Q. Did the lights work satisfactorily in your cabin? A. No. That's how we know.

Deposition of Dr. Jules Aeby

"Q. Did you make a complaint to anybody about it? A. Yes, The steward.

"Q. Whom did you tell about it? A. The steward. And he came back and did something and then he was going to look into the matter. But it never got remedied properly, although he tried his best to do something."

• • •

[159] Dr. Jules Aeby.

"Q. And did you not define organic compounds as substances capable of burning when fire was applied to them? A. Exactly my words.

"Q. Now you also defined the term inflammable in your 1910 and 1922 editions, did you not? A. Yes.

"Q. And did you not define inflammable as substances which at more or less high temperature give off gases which in the presence of a naked flame, ignite or explode? You may look at the books, if you wish, Dr. Aeby. A. Let me interrupt you a minute. You are speaking about my two first editions.

"Q. That is correct, sir. A. But when I made a new edition it is always [160] the last edition that is in my opinion the best I knew at that time.

"Q. I shall come to that—— A. I do not know the previous editions but there may be contradictions when I after offered suggestions, made changes. For the time being it is the 1955 edition which is just out of press. That is now the book that I look at first. I may look at the others occasionally for something for instance in the 1938 edition, the introduction was much more detailed. But I found that after all my clients were practical people. They only wanted to know one thing, is there danger or not. And the success of my book, because it was a success and still is, resides precisely in the question that I put myself into the place of my clients and I can do that so well because my brother was and still

is the chief of the Red Star which still exists but which is now a small concern, it is really the Holland-America Line. So I saw the two views and still see them: the one who looks after the freight and the technical man who has to help the freight man.

"Q. And you are a technical man? A. I am a technical man.

• • •

[163] "Q. Now in the first and third editions, the 1910 and 1938 editions, you listed only such goods as were dangerous goods within your definition of dangerous goods, did you not? A. To answer that question, I should look at all the items that are listed, because there may be some in it that are not particularly dangerous.

"Q. I say, Dr. Aeby, dangerous within your definition as dangerous goods as given in these two books. A. You see, Mr. Zisgen, as I said before I wanted before all to make a practical book and it is quite possible that in the two first editions I have put in certain commodities because I knew that my friends would ask me about it. But it may be that some are there not particularly dangerous or perhaps not even dangerous, but that I put them in because I knew that [164] the users of my book wanted information about certain articles. It is not a scientific book it is a practical book and I tried at the beginning and later even as now the last edition is not 'Dangerous Goods' any more but it is 'Dangerous Goods and Others' because it is practically impossible to put all the goods that are in commerce to put them in the book. There are thousands of commodities, so I tried to only mention those that are in general use. But it does not necessarily mean that when they stand in my book that they are. This is well explained in the last edition 'what does dangerous goods mean?' Now that term has been adopted from the very beginning by the Board of Trade first and by you people in America and I took the same title. But nowadays as I said in the last edition I would rather say that I

give characteristics of as many products as possible which are known and which are regularly transported because the people who buy my book want to have the information about it and they asked nothing better but to find there is no danger.

[165] "Q. When you say 'last edition,' Dr. Aeby, you mean your 1955 edition? A. Which came out in June of this year.

"Q. Did you not in your 1910 edition, limit yourself to the mention of dangerous commodities. I show you page 42 of Libelants' Exhibit 3. A. I have already answered this question. To give you an answer to that I ought to go back from 1 to 383 and say one, two are dangerous, three and four may be semi dangerous, and five and six may be just a commodity that I wish to give some information about without characterizing it as dangerous or hazardous. I cannot answer that question unless you let me take the one after the other. I find here chlorates, chlorites . . . all the chlorates are dangerous. That is only an example. To answer your question whether all of the articles in the 1910 edition are dangerous, I wish to take them one after the other and say dangerous, semi-dangerous, or hardly dangerous.

"Q. It is a question of degree, is that correct? A. It is especially from a practical standpoint a question of giving information, where most likely the people who buy my book want information."

• • •

[170] • • • "Q. Then in June, 1955, you published your fourth edition of your book and I show you Libelants' Exhibit No. 5 for identification. That is a copy of your fourth edition, is it not, sir? A. Yes, that's right. Naphthalene, page 388."

• • •

"Q. Again you mentioned naphthalene in your fourth edition, did you not? A. I did.

"Q. And again you recommended that if stowed on deck it be protected from the rays of the sun? A. Yes, with the only difference that I said preferably. One word more: preferably covered.

[171] "Q. And that preference in your recommendation was because of the danger that you mentioned a few moments ago, was it not? A. Yes.

"Q. And since 1938 at least and up until the time you published your fourth edition in June of this year you have felt it preferable that if naphthalene is stowed on deck it be covered and protected from the rays of the sun, is that correct? A. Yes.

"Q. And you have felt that because of the dangers that you have told us about? A. Yes."

• • •

"Q. Dr. Aeby, you have been consulted by the Belgian courts as an expert from time to time have you not? A. Especially by the Tribunal de Commerce, not the general court.

"Q. But by the Tribunal de Commerce? A. Yes.

"Q. Here in Antwerp? A. Yes.

"Q. And has that happened on numerous occasions? [172] A. What do you call numerous?

"Q. You tell me what you call numerous? A. What I call numerous?

"Q. Yes. A. Well, twice a week.

"Q. Have you been consulted that often? A. No, no, I have not been consulted for quite a number of years.

"Q. Prior to that number of years, were you consulted several times in a year? A. Before that time?

"Q. Yes. A. I would have to look into my fees account and see how many fees I got.

"Q. You don't recall? A. I was consulted. But how often and when? I could make you a statistic if that is useful.

Deposition of Carl van den Bosch

"Q. Can you tell me, sir, how many copies of your third edition were printed? A. The third edition? 3000."

• • •

[182] CARL VAN DEN BOSCH—

"Q. Mr. van den Bosch, has Belgium or has it not enacted any local legislation similar in terms to The Hague rules? A. Belgium has enacted a law similar to The Hague Rules which last was voted on the 28th of November, 1928, and introduced into the Belgian Code of Commerce, Book II, under article 91.

"Q. Do you have a copy of that statute with you? A. I have a copy of the statute with me and I will show you."

It was then stipulated that a photostatic copy of that might be substituted. I have it here and I should like to offer it.

(Marked Libelants' Exhibit 23.)

• • •

"Q. Mr. van den Bosch, can you tell us what, if any, differences there are between the rules known as The Hague Convention and the provision of article 91 of the Belgian Maritime Code. A. The only differenc refers to the scope of application of the rules, whereas the convention is [183] only applicable to contracts of carriage covered by a bill of lading made in one of the contracting states, while the domestic Belgian law makes the rules applicable to every bill of lading covering a carriage bound to a Belgian or a Congolese harbor or starting from a Belgian or Congolese port."

• • •

[186] "Q. Do you know of any judicial decisions interpreting this article 59 of the Maritime law, Mr. van den Bosch? A. I have not taken with me judgments applicating the principles of article 59, but I may ascertain that the

whole Belgian jurisprudence is based on that provision, whereas there are hundreds of decisions by the Belgian courts. This can be verified by reading the 'Pasicrisie' which is a general review of Belgian jurisprudence and by more specialized reviews, such as the 'Jurisprudence du Port d'Anvers,' of which two or three volumes are available for you.

"Q. Can you refer us specifically to any portion of the volumes available here today which bear on article 59 or article 66? A. I am able to refer to volume 1880 of Jurisprudence d'Anvers, page 342, where a judgment of the commercial court of Antwerp is published in the case of Kennedy Hunter v. Cpt. Van Dort.

"I am also able to refer to the volume 1886 of Jurisprudence du Port d'Anvers, page 149.

"I am also able to refer to volume 1922 of [187] Jurisprudence du Port d'Anvers, page 180 to 185."

• • •

[191] • • • question asked by Mr. Stonebridge of Mr. van den Bosch, this Belgian lawyer, on page 14:

"Q. Does any law, royal decree or regulation of Belgium in effect in July 1952 or in effect today contain any specific reference to the stowage of naphthalene? A. As far as I know there is not."

• • •

"Q. Then, if I understand you correctly, Mr. Van den Bosch, it comes down to this, that the Belgian courts in determining or deciding whether a stowage is proper, take into consideration opinions of experts, including chemists, customs and practices in the steamship business and the opinion of people experienced in the stevedoring and steamship business, and, also at times the opinions of chemists who are experienced in the transportation business? A.

You are correct, sir, but I should add that [192] the courts also refer to books written by specialists on those subjects and that they are not bound by the advice so given.

"Q. That is, the courts use their own judgment in each particular case and they may or may not accept the experience, the advice, the opinion of any one particular, expert or experts, or any one book or books for publication. Is that correct? A. Well, the matter must of course be considered as a matter of common sense. That means that in general and in fact the courts will accept the advice of authoritative experts, unless it can be proven that such advice is wrong and that the expert made a mistake.

"Q. Is not this the situation, that the court weighs the evidence in each particular case and makes its decision? A. That is right, sir."

• • •

Mr. Zisgen: The next deposition, your Honor, is that of a Dutch lawyer, whose deposition was taken at Rotterdam on August 10th—DR. A. C. W. BEERMAN.

• • •

Mr. Stonebridge: Your Honor, before Mr. Zisgen refers to the deposition of Dr. Beerman, I would like to call the Court's attention to the fact that much [193] of the material contained in there appears to me—and I believe also to Mr. Pyne, to be hearsay and clearly inadmissible. In taking testimony of other Dutch lawyers, Mr. Pyne was forced to go into hearsay also to rebut the hearsay contained in Dr. Beerman's testimony.

On my part, I am willing to waive any objection to any hearsay testimony in Mr. Beerman's testimony provided Mr. Zisgen agrees now that he will permit us in introducing the testimony of our two Dutch lawyers to follow through in the same manner, that is, that he will waive objection to hearsay.

Mr. Pyne: I am in the same position.

Mr. Longley: I don't think we can make blanket agreements on any such things. I don't know what my brother is talking about. We have to deal with this as we go along.

Mr. Pyne: It seems to me you haven't read the depositions, Mr. Longley. We are specifically talking about a letter produced by this Dr. Beerman, purporting to state certain things, a letter from a third party not called as a witness.

Now, in response to that, from the same office, I may say, we have other letters which are [194] in direct conflict with the letter in question, and if we are to permit the first letter to be introduced, which we think is clearly hearsay and clearly inadmissible, we don't want to be in a position of waiving an objection to that letter and then being confronted later with an objection on our part or to our testimony which is clearly stated to be in rebuttal of that very letter.

The Court: That seems to be specific enough, Mr. Zisgen.

• • •

[198] "Q. Is the Kingdom of the Netherlands a party to the International Convention on Rules relating to Bills of Lading, otherwise known as the Hague Rules Convention? A. The Hague Rules have so far not been incorporated in our maritime law, but the principles of the Hague Rules are also basic for our maritime law. You can put it in this way that the Hague Rules have a wider application in Holland, because the rules about liability laid down in the Hague Rules are also applicable to charter parties.

"Q. Do I understand that the Kingdom of the Netherlands has never made itself a party to the Hague Rules? A. It has signed the Convention but it was never [199] ratified.

"Q. Was that true in 1952? A. Yes.

"Q. The statement you made a moment ago about the principles of maritime law in the Kingdom of the Netherlands is also true as of 1952? A. Certainly.

• • •

[206] "Q. That is a translation of the regulations to which you have referred? A. Yes. I can give you as an exhibit a letter of the Inspector General of Shipping."

Mr. Pyne: Now, here, your Honor, is the part that we objected to. He produced a letter from this third party, the Inspector General. It is that letter, quoted in the translation and the part above which we say is the hearsay. If that letter is to go in, we have met it, we feel absolutely certain, quite effectively with similar data from the same source.

If one goes in, we have no objection to it going in provided we are not later going to be met with an objection of having waived this.

The Court: Is it your position that it is not hearsay?

• • •

[208] The Court: I am forced to disagree with you and exclude it.

Mr. Zisgen: Your Honor mentioned unless the person who wrote the letter was in a position to issue a decree. Now there is, or will be, testimony here that that person is in that position. I don't think it is a matter that your Honor can rule on without hearing something more here.

The Court: All right, I certainly want to hear all there is to the subject. As I understand it, this is something which was issued after the accident.

• • •

[209] Mr. Zisgen: * * * After all, I may not be familiar with every word in this book (indicating) but

if I am asked after an event what was the law at the time of the event, I see nothing wrong in going and looking it up to see what it was at that time.

The Court: Certainly not. If you testify to that, and your opponent has an opportunity to cross-examine you, we will take your statement as to what was in effect at that time.

Mr. Zisgen: Yes.

The Court: And that we do not have in the case of this inquiry.

Mr. Stonebridge: Your Honor, I seriously question Mr. Zisgen's statement that the signer of that letter was authorized to issue royal decrees or regulations.

The Court: It does not make any difference, because the letter was signed after the accident happened anyway, and would not be in effect at the time.

[210] Mr. Pyne: It is not signed by the Inspector General but rather by a subordinate in his office.

• • •

The Court: • • • For the present I have ruled it is hearsay and inadmissible.

• • •

[213] Mr. Pyne asked: "What is the date of the letter? A. July 30th, 1954.

"Q. And to whom is it addressed? A. To John Hudig & Son, Lloyd's Agents."

• • •

[216] "Q. You mentioned a revision of the Shipping Law at the end of 1952. A. Of the Shipping Ordinance.

"Q. And you mentioned a requirement in that revision of the Shipping Ordinance. Can you give us the specific

eference to the provision that you mentioned? [217] A. referred to art. 99 paragraph 13 of the Shipping Ordiance of the 31st of December 1952, published in the Govrnment Gazette Nr 679.

"Q. Do you have with you a copy of the 1952 revision o which you have just referred? A. In the edition Schuurnan & Jordens which I have quoted already, of 1954."

• • •

[221] Mr. Stonebridge: I would like to read my cross examination of the witness, your Honor.

• • •

Mr. Stonebridge:

"Q. Summarizing portions of your testimony, am I corect in my understanding that 1) the Netherlands signed ut never ratified the Hague Rules Convention? A. That s true.

"Q. 2) that the second book of the Commercial [222] Code of 1927 and the Shipping Law of 1909 together with the Shipping Ordinances issued pursuant thereto constitute the main body or basic shipping law in the Netherlands? A. As regards the technical side, safety, etc., the Shipping Law has to be distinguished from our commercial maritime code. Beerman Exhibit 1 contains the maritime law with respect to contracts of carriage, charter parties, bills of lading, collisions, etc., whereas the Shipping Law which I quoted is the law which was promulgated in 1909 in order to promote the safety of ships, their people on board and their cargoes. The Shipping Law inaugurated the system of controls by the Shipping Inspections, it deals with lights, lifeboats, boilers, all kinds of loading gear, special requirements of safety for passenger ships, etc.

• • •

[223] "Q. Is it correctly understood from what you said that the harbor masters have no control or no direct

interest in the safety on the harbor with respect to goods which may be carried or may not be carried? [224] A. That they have no control whatsoever with respect to the safety of goods is perhaps somewhat exaggerated. The harbor master may exercise a certain control in respect of the local regulations which are in force to prevent fires in the docks, in the sheds. But as I have said before it is not the task of the harbor master to control the stowage on board ships.

• • •

[228] Mr. Pyne: Just before the recess, your Honor, Mr. Stonebridge read from some of his cross-examination of Mr. Beerman, the Dutch lawyer.

May I read from parts of my cross-examination?

The Court: Yes, Mr. Pyne.

Mr. Pyne: Page 24:

"Q. Did you prior to July 18th, 1952, make any enquiries or make study with respect to the stowage of naphthalene? A. No.

"Q. When for the first time, as best you can recall it, by month and date, did you first make any enquiries or any study with respect to the stowage of naphthalene?"

• • •

[229] A. I could not say. I have so many questions. I have so many conferences. I give advices on the telephone, in writing.

"Q. You know or you have been told of the Black Gull fire involving naphthalene, which occurred at July 18th, 1952. You have heard that was the date. What I am asking you is whether prior to the time you first heard of the Black Gull fire you made any enquiry anywhere or investigation concerning the stowage of naphthalene. A. I don't know when the question was put to me whether the Black Gull was mentioned or not.

Deposition of Dr. Sjur Brackhus

"Q. But you do know that it was subsequent to the Black Gull fire? A. Yes.

• • •

[233] • • • deposition of Dr. Braekhus, a Norwegian attorney, called as a witness by the petitioner at Oslo. • • • question by Mr. Pyne:

"Q. • • • What is your occupation? A. I am professor of law at the University, Oslo.

• • •

"Q. How long, Professor, have you been in that occupation as Law Professor? A. I was made a Professor of Law in January 1948—about 7½ years."

[234] He then went along to describe his legal career, the degrees that he had as Doctor of Law, and he specified that he had served as lecturer in law and had sat as a judge of the Court of Appeals of Oslo on several occasions over a period of one and a half years.

And at page 54 he was asked as of the time June and July, 1952:

"Q. Was there at the times stated any such law, rule or regulation which mentioned or referred to that chemical product"—meaning vinyl cyanide. A. There were not any special rules concerning that product, but as vinyl cyanide is an inflammable substance, the general rules concerning inflammable substances will apply.

"Q. Now, will you tell us and identify for us what that general rule is to which you refer, first identifying it and then telling us exactly what its full content is? A. The basic rules are found in Norwegian Statute of 1903, 9th June, governing the public supervision of the seaworthiness of vessels (Section 72). I have the Norwegian text here

and there has been made a translation. I will read the translation:

[235] "'Specially inflammable goods such as ether (naphtha) and other liquids containing ether, carbon disulphide' "—and he goes on naming several other liquids, your Honor—"'whose flash point is below 22 degrees Centigrade (Celcius) at a barometrical reading of 760 millimeters, tested in the way prescribed by the Ministry, must, in passenger vessels be carried on deck only, and in strong containers. If in other ships, such liquids are to be carried below deck, the vessel must either be arranged as a tanker, or the liquid must be carried in strong gasproof containers which must be efficiently protected. Before specified regulations for such carriage have been issued, such cargo must not be carried below deck in ordinary vessels. All crew cabins must in this case be placed on the upper deck.' "

That is the end of this quotation. Then he goes on:

"Then there are issued regulations governing the carriage of highly inflammable substances in ships not holding a passenger certificate, [235a] of September 16th, 1908. In Section 2 there is a definition of highly inflammable substances, practically identical with the Statute, but perhaps I should refer to that as well?"

And it was agreed then that we should give the text of that to the stenographer to copy. Now, what she copied reads:

[236] "Section 2. As highly inflammable substances shall be considered: ether (naphtha) and other liquids containing ether"—and he names several others—"in quantities exceeding 1000 kilograms

when the 'flash point' of the substance is below 22 deg. Celsius (centigrade) at a barometer reading of 760 mm. tested in the manner prescribed by the Ministry. Until further notice the tests shall be carried out as prescribed by the Royal Decree of November 1, 1890 in 'Regulations governing the procedure when examining the inflammability of mineral lamp oils by means of the Abel petroleum tester' or in a similar manner.

"Section 19"——

that contains the rule concerning carriage of inflammable substances as deck cargo—and he read that in English:

"Highly inflammable substances may be carried as deck cargo when contained in vats or cans as mentioned in Sec. 15. They must be placed at a sage distance from any companion-way, or other opening into the deck, cabins or engine-room, and must be properly stowed, and securely [237] lashed. Smoking is prohibited in the neighbourhood of the places where such substances are stowed. When loading or unloading such substances care must be taken that no danger can be caused by fire or sparks from engine, funnel, lights, etc."

• • •

"Section 15 describes what sort of packing should be used. I think these Sections are those which are of interest here.

"Section 15: When carried below deck in ships which are not arranged as tankers, highly inflammable substances must be kept in:

"1. Solid, cylinder shaped barrels" which are further described there.

"2. Strongly made steel cans"—further described.

"3. Strongly made cans made from tinplate," which are also further described.

"Vats and cans must not be completely full." and then he says that those are all the rules and regulations which pertain to the matters inquired about.

• • •

[238] "Q. Norway is a party to the International Convention relating to rules for Bills of Lading, known as the Hague rules, is it not? A. Yes.

"Q. And it is also a party to the International Convention for the safety of life at sea, signed in London in 1929? A. Yes.

"Q. And that was true as to both Conventions in June and July, 1952? A. Yes.

"Q. It is also now a party to the International Convention for the safety of life at sea signed at London in 1948, is it not? A. Yes.

"Q. But that Convention did not become effective as to Norway until some time subsequent to July, 1952? A. That is right."

• • •

[240] "Q. You mentioned a Norwegian Carriage of Goods By Sea Act. That, I take it, is a Norwegian Statute similar in terms to the Hague Rules. Is that correct? A. That is correct.

"Q. Does it have any wider application than the Hague Rules? A. No, it is applicable on all bills of lading. According to Section 9 of that Statute of the Norwegian Carriage of Goods by Sea Act, February 4th, 1938, it is applicable on all bills of lading issued in Norway for outward cargo, and for all bills of lading for inward cargo from countries which have ratified the Bills of Lading Convention, and then there is a [241] separate section for Scandinavian trade, which I suppose is not of interest here.

Deposition of Dr. Sjur Braekhus

"Q. Doctor, there is nothing in the law of Norway which relieves Norwegian vessels and Norwegian carriers of obligations imposed upon them by the laws of foreign states into whose waters they trade, is there? A. There is no special rules."

• • •

"Q. In the absence of specific rules relating to the carriage and stowage of particular kinds of goods, to what sources of information do the Norwegian Courts look to determine whether the loading and stowage of such goods is careful or is negligent? A. I suppose they would turn to expert witnesses.

"Q. Is there any other source to which they customarily turn? A. They would use the decisions of other Courts and literature.

"Q. What do you mean by literature? A. Technical, chemical and so on. They could use every source of information.

"Q. And would that include literature, whether in the form of regulations or laws or not, of other countries as well as of Norway? [242] A. Yes, of course, if it could serve as an example. It would not be binding."

Skipping a question and answer, on page 64:

"Q. The fact that a particular commodity is not mentioned by name in any regulations concerning loading or stowage does not in Norwegian law relieve the carrier of its obligation to load and stow that cargo carefully, does it? A. No, it does not.

"Q. Naphthalene is inflammable, is it not? A. Yes."

• • •

Deposition of Alfons Spiessens. • • • Chief checker, who was produced by the attorneys for Black Diamond Steamship Corporation for examination on discovery.

• • •

Deposition of Peter Ras
Deposition of Pedrick D. Herlofsen

[245] * * * Mr. Peter Ras, who was examined at Rotterdam on August 10, 1955.

Mr. Ras testified that he was a nautical surveyor employed by John Hudig & Son, Lloyd's Agents at Rotterdam. He described some experience as an officer sailing at sea prior to becoming a nautical surveyor, and then testified that he had been the nautical surveyor who surveyed a shipment of naphthalene which has sustained damage by fire on the steamship Norwalk Victory at Rotterdam in September, 1948.

He testified that in the usual course of his business as a nautical surveyor he had made a report of his findings as a result of that survey, and the original report of course was forwarded to the applicant for the survey, the copy was found in a book and we marked for identification at that time a typed copy of it, which I have here, and which I will offer in evidence.

(Marked Libelants' Exhibit 39.)

* * *

[246] * * * Deposition, of Pedrick D. Herlofsen.

* * *

"Q. Mr. Herlofsen, where do you reside? A. Oslo.

"Q. And what is your occupation, Mr. Herlofsen? A. I am shipowner.

"Q. And as a shipowner, do you have an association or connection with any particular firm, [247] corporation, limited society or steamship company of any kind? A. I am one of the directors of Sigurd Herlofsen & Co. A/S.

"Q. Will you tell us whether that company is a corporation, limited society, partnership, and where its principal office is?

* * *

Deposition of Pedrick D. Herlofsen

"Q. What, please, is the type of business that is done by that company? A. That is, in short, shipowning business.

"Q. And do they act as an agent or manager for owners or vessels? A. They act as managers for all the companies that own ships in our concern.

• • •

[248] "A. Well, they do all the work necessary with regard to operations of the ships.

"Q. And, for example, what would that be? A. For example, at Sigurd Herlofsen & Co's office they employ the crew, they arrange the insurance, arrange repairs, maintenance, chartering, new building contracts, by laws, etc.

"Q. Do you know who the owner was of the motor vessel named and called the 'Black Gull', who the owner of that vessel was in June and July, 1952? A. That was Skibs A/S Jolund registered in Moss, Norway.

"Q. And is that company, which you have just mentioned as being the owner, a corporation, limited company or partnership? A. A limited company.

"Q. Are you personally in any way connected with that company? A. Yes.

"Q. In what way or capacity? A. Since 1931 I have been a member of the Board, and since 1953 I have been Chairman of the Board.

"Q. And when you say Board, are you referring [249] to the Board of Directors of that vessel owned by that company that you mentioned, that limited liability company of Moss? A. Yes."

• • •

[251] "Q. Can and will you tell us, Mr. Herlofsen, you have already having stated that Sigurd Herlofsen selects or engages or appoints, rather, the members of the crew, can you tell us what the system of Sigurd Herlofsen is, and was particularly in June and July and prior to that

in connection with the selection of officers and crew and their engagement or appointment? A. We have our own Crew Department, which at that time was headed by the head of our Maritime [252] Department. That man employs all the captains and deck officers, while the Technical Department employed all the engine staff. With regard to the ordinary crew, they were more or less selected by an assistant in the Crew Department.

"Q. Now you have mentioned the man who selects the Deck officers. Who was that man? A. That was Captain Wellton.

"Q. Is he presently employed by Sigurd Herlofsen? A. He is retired.

"Q. And at the time in June and July, 1952, did Captain Wellton have any particular title here in your organization of Sigurd Herlofsen & Co.?"

• • •

"The literal translation is 'Inspector.' Being the Shipowners' Surveyor, he could be called a Marine Superintendent.

"Q. Did Sigurd Herlofsen & Co., or did it not, in connection with the officers, master and other deck officers, engineers and other members of the crew, follow the system which you have just outlined in so far as concerned the officers and crew who were serving on the Black Gull in June and July 1952? A. Yes, we did."

• • •

[253] "Q. Well then, I will again, to make sure we are straightening the record out, ask you whether or not the 'Black Gull' continued in operation under this charter, Exhibit 10 for identification, from the time that charter was entered into, down to and including the 18th day of July, 1952? A. That is correct."

• • •

[258] At page 24 he simply read the provision of the by law as to the arrangement under which Sigurd Herlofsen & Co. had become managers, and it is substantially what he paraphrased before. He testified that the company relied on the master of the ship to hire replacements of the crew in instances in which there was——

• • •

in instances in which there was no time to send someone out in Norway. He testified at page 30 that as the masters and other officers of Herlofsen vessels were relieved and came back home it was their custom to stop in at the office of Sigurd Herlofsen & Co., where as a rule they stopped in to see him and also stopped in to see the heads of the respective departments [258a] of the Herlofsen business, whether it be the Maritime Department or the Technical Department and talked things over with them.

• • •

[259] "Q. And when her earlier masters were relieved by their successors, did they not come here to report to Sigurd Herlofsen & Co.? A. Yes, they always came to my office when they left the ship.

"Q. And did they not report to you in general? A. In general, they reported to my Maritime and Technical Department.

"Q. That report was what—an oral report, a written report, or both? A. It was not written, it was more or less an informal talk.

"Q. And when you say your Maritime and Technical Department, just what do you mean? A. You mean at the time of the disaster?

"Q. Let us say between the time the 'Black Gull' [259a] was first delivered to Black Diamond under charter Exhibit

No. 10, and the end of June 1952. A. The head of my Maritime Department was Captain Wellton.

"Q. He is the man you mentioned earlier? A. Correct. And we had two men in the Technical Department, Mr. Lie and Mr. Rambech."

Mr. Pyne: That is all right.

• • •

[267] "Q. Whether as a matter of law or not, as a matter of practice it was the master who was the highest ranking employee of Herlofsen & Co. who determined, or at least exercised a veto power over the acceptance of cargo and its stowage? A. Yes, that is the only practical way of operation.

"Q. And that system did exist for the whole period of this charter? A. For the whole period of the charter."

• • •

[268] "Q. In exercising that authority, did the master ever consult with you or with anyone else in Sigurd Herlofsen & Co.? A. Not to the best of my knowledge."

• • •

• • • cross-examination of Captain Svendsen • • •

• • •

[270] "Q. Now, during the period from 1949 to 1952, when you were assisting Captain Wellton, did you on any occasion see naphthalene stored on deck of a Herlofsen ship chartered to Black Diamond, uncovered? A. Yes.

"Q. On how many occasions? A. Well, as I said, I would say about eight or ten occasions at least. Well, let us say ten occasions about.

"Q. Ten occasions during that period? A. Yes."

• • •

Deposition of Johannes A. Driesprong
Deposition of Jacobus de Nobel

"Q. Did you on any occasion mention that to Captain Wellton? A. No."

• • •

[271] "Q. You kept that strictly to yourself? A. Yes, because to me it was nothing unusual. I had, as a chief officer, carried naphthalene on deck in just that same manner.

"Q. And you felt that it did not require any particular mention to your superior? A. Yes.

"Q. You, as Captain Wellton's assistant during that period, knew that Black Diamond was accustomed to carrying naphthalene in that fashion? A. Yes, I knew it."

The Court: What was the deponent's name in that deposition?

Mr. Zisgen: Inge Svendsen. • • •

• • •

[289] JOHANNAS DRIESPRONG

Mr. Pyne: May I state here, your Honor, that the witness was examined in English, but as to some of it he had to get the aid of the interpreter.

[290] If I recall it, I think that was true of all of these witnesses, Mr. Abberley.

Mr. Abberley: I believe so.

• • •

[304] "Q. Mr. de Nobel, immediately prior to the time of this fire that occurred, where were you? A. Well, we had had the captain's dinner, and let's say at ten-thirty I went up to my room and before undressing myself I just went out because my room was very near to the outside, to the gangway outside. And so I may have been for 5 or 10 minutes just on the deck, just to have a bit of fresh air.

Well, and then I went in. In the meantime, Mr. Spaanderman had undressed himself and was lying on his bed. And then I started to undress myself and I had just my jacket taken out when the stewardess came up and said to us: "gentlemen"—there is a word "ship"——

Mr. Pyne: Yes.

Mr. Abberley: ——"ship in fire, dress yourselves. Take it easy. Take it easy. So I just took my pair of trousers off, the new one, you know, and put my old suit on because all my belongings were nearly all in there,—belongings I mean portfolio, passport cheques and such like things. That I knew, you see. So, I indeed took it a bit easy, because I did not know it was so [305] very dangerous already. Then this lady told me also to go to the smoking room. But before going to the smoking room. But before going to the smoking room I just looked out again on this deck as I had been before, and saw already one lifeboat, the motor lifeboat, in fire, in flames.

"Well, then I went to this smoking room and just waited what would happen afterward.

• • •

[313] Peter Spaanderman

"Q. Where do you reside, Mr. Spaanderman? A. Santpoort, 47, Van Dalenlaan.

"Q. What is your age, Mr. Spaanderman? A. A. 39.

"Q. What is your nationality? A. Dutch.

"Q. Were you a passenger on the Black Gull on July 18, 1952? A. I was.

"Q. You were travelling with Mr. de Nobel? A. I was travelling with Mr. de Nobel, yes."

• • •

Deposition of Peter Spaanderman

"Q. • • • are you and Mr. de Nobel in the same office? A. We are in the same office. Mr. de Nobel is my secretary."

• • •

"Q. When you boarded the Black Gull, were you assigned a cabin? A. Yes.

"Q. Was Mr. de Nobel in the same cabin with you? A. He was in the same cabin.

[315] This witness testified that he was several times on the deck where the cargo was stowed.

• • •

Mr. Pyne: But he also said "most of the time I was on the decks around the bridge."

• • •

[316] "Q. As to the maindeck where the cargo was stowed, in the stern of the vessel, did you ever see any members of the crew smoking in that area? A. I never saw any one smoking on the after deck."

• • •

"Q. Where were you immediately prior to the time you were notified that there was a fire? A. I came from the smoking room going up to my cabin, but just before I went to bed I looked out at the sea and then I went to my cabin, where I undressed. And I had just finished undressing, when the door was thrown open and the stewardess entered and said: Keep it easy, get dressed, the ship is in flame.

"I immediately went after her and saw that there was a fire abaft the motorboat.

"Q. Was the motorboat you refer to one of the two lifeboats on board? A. Yes, that was so.

[317] "Q. To clarify one point: the first thing you saw when you came out of your cabin was the motorboat burning? A. At that moment the motorboat was not yet on fire.

"Q. Tell us what you saw at that moment, and what you did from that moment on. A. At that moment I entered my cabin, quickly put on some clothes, and ran down

the stairs to the deck where the cargo was stowed. Some people were engaged in pulling a hose. I assisted in pulling that hose, until I presumed we had no longer any water.

• • •

[320] "Q. Let me interrupt here a moment. What members of the crew were in that boat with you? A. I believe the second officer, and then about 14 crew members, of what rank I do not know.

"Q. Now, Mr. Spaanderman, there came a time when you were picked up by the Gripsholm. Is that correct? A. Yes.

"Q. How much time would you say elapsed between the moment you were in the lifeboat and lowered in the water, and the time you were picked up by the Gripsholm? A. Between 3 and 3½ hours. But I must add that I had no notion of what time had elapsed."

• • •

[325] • • • deposition taken of Thomas Leeson

• • •

"Q. What is your occupation, Mr. Leeson? A. Well I represent divers firms over here and some in England for road and building machinery.

"Q. What is your nationality? A. British.

"Q. What is your age? A. 69½.

"Q. Were you a passenger on the M/S Black Gull on or about July 18, 1952? A. Yes.

• • •

[327] "Q. Tell us generally where you would walk on this ship?"

And he described a deck which he referred to as a promenade deck, as being the roof of their cabin.

"Q. Where did you see the crew or other passengers walk? A. Well, the crew mostly—mostly aft, on the main deck.

Deposition of Thomas D. Leeson

"Q. Did you notice any passengers walking in that area of the ship? A. Only one, to my recollection, who went down on that deck, fore and aft."

• • •

"Q. Were receptacles provided for smoking on your own deck? A. I didn't see any."

• • •

[329] "Q. Mr. Leeson, do you recall the incident which took place on July 18, 1952, aboard the Black Gull? By that I mean the fire. A. I recall a lot of that incident.

"Q. Will you tell us what you can in chronological order of your experience on the evening of July 18, commencing at the time you were eating your dinner. Identify that time, if you can. A. Well, the dinner hour was between 6 and 6:30. They always ate early there. We—it was the captain's dinner. After—or during the dinner, the first officer, who was at the captain's dinner, for the first time in my recollection was called hurriedly out. The chief engineer and the captain also left the table. After the dinner was over, we all went into the lounge for coffee, and then we went up on deck, which would be after 10 o'clock, but I am not sure of the hour. We chatted on deck for a certain time. Then we went down to our cabin.

"Shall I carry on?

"Q. Yes. Please do. A. I was fast asleep when I was wakened by my wife, who told me the ship was on fire.

• • •

[333] "Q. You spoke about or you were asked about smoking, and I understood you to say that you smoked on your own deck? A. Yes.

• • •

[334] "Q. You spoke of seeing some passengers walking aft. I understood you to say that the crew walked aft where this naphthalene was located. A. The crew, yes.

Deposition of Thomas D. Leeson

"Q. And if I followed you, you said there were passengers there. A. There was one passenger. I can specify one passenger. He was a German young boy, and I know he used to get out along the fore part, from the bow of the ship. But I believe he was eventually told not to do it."

• • •

[336] "Q. Was there exposed naphthalene on the deck from any broken bags or part of the deck where the crew walked? A. To the best of my recollection, that's where I saw the broken sacks, right at the very beginning."

• • • •

[337] This witness did say, however, that he did not see any big crystals. This witness also said he did not see any great or big quantities.

• • • •

Then this witness went on to testify he did see people sweeping up the crystals from time to time.

Mr. Pyne: In the early morning.
Mr. Abberley: In the early morning, yes.

• • • •

"Q. On how many occasions did you notice loose [338] naphthalene crystals on the main deck? A. I only noticed that right at the beginning, the first or second day out, when we were getting our bearings, looking at everything, and we noticed then that there were slopping over in a couple of places—of the crystal—but to say that we saw them day after day, I can't go that far. But there was a slopping out of naphthalene, naked crystals, onto the steel decks."

• • • •

"Q. Can you give us some idea of what we are talking about? Was this a handful or a bucketful? Was it a large

quantity or a small quantity? A. Visible small quantity in a couple of places. Visible small quantities.

• • •

[339] "Q. But on the port side, this stow of bags of naphthalene extended about the height of the bulwarks. A. Yes.

"Q. Inboard within two or three feet of the hatch coaming? A. Yes.

"Q. As you saw it, it was approximately a solid stow from forward toward the aft, on the port side? A. Yes, if you call sacks, ordinary gunnysacks [340] filled with loose crystals a solid stow, then I'm with you.

"Q. I am not talking of anything like brick, but the bags were stowed closely together? A. They were stowed closely together."

• • •

"Q. And you smoked where you wanted to? A. Well, yes and no. We only wanted to smoke on our own deck. That was the only part of the ship that interested us, and we smoked there."

• • •

"Q. You don't happen to be a cigar or cigarette smoker, do you? A. Cigars, definitely not. Cigarettes, practically definitely not."

• • •

[341] "Q. Do you remember what time it was that you actually turned in to bed that night, approximately? A. Ten-ish,

"Q. Ten-ish? Around ten o'clock? A. About.

"Q. And your wife went to bed at approximately the same time? A. Yes.

"Q. When had you last, prior to that, that night, if at all, been out in the open on that deck, either on this promenade or any other deck? A. After we finished dinner and

coffee, we went up on the promenade deck for a bit of fresh air."

• • •

[342] "Q. What did you do, Mr. Leeson, with the tickets you received?"

Mrs. Leeson interjects: "They were probably destroyed."

"A. We turned them in to the steward when we got aboard.

"Q. You turned them in to the steward, or the purser, or whoever had charge of that? A. Yes.

"Q. I am going to show you a form of ticket and ask you whether or not that is the same kind, type and form of ticket properly filled in that you had and you used? A. Do I have to read all this, because I didn't read the other one——"

Mr. Abberley states: "I understand that this is a copy of the ticket or the contract," and I [343] said, "This one that I am producing. I will ask to have that marked."

It was marked, your Honor, and I will now offer that form in evidence as an exhibit.

(Marked Petitioner's Exhibit C.)

• • •

[347] "Q. Do you smoke, Mrs. Leeson? A. No.

"Q. At any time did you ever notice anyone, passengers, officers or crew, smoking on the main decks of the Black Gull? Do you recall the main deck where the naphthalene was stored? A. Yes; I do. No. They didn't go there.

"Q. Who didn't go there? A. The passengers.

"Q. Did you at any time ever notice any of the crew smoking on the main decks? A. No. I didn't take any notice of it.

"Q. Did you notice any of the officers smoking on the main decks? A. No.

"Q. Did you at any time ever notice any of the crew or any of the officers smoking? A. We didn't mix with the crew, so I wouldn't know. And the officers smoked after dinner.

"Mr. Pyne: In the dining room?

"The Witness: In the dining room or the lounge.

"Q. That is where you saw them smoke? [348] A. Yes.

• • •

[359] *Direct examination By Mr. Longley:*

Q. Captain, you understand some English, do you not? A. (In English) Yes.

• • •

[360] Q. You have been brought to this country by the [361] owners or the former owners of the Black Gull? A. Yes, sir.

Q. To testify in this case? A. Yes, sir.

Q. How long had you been master of the Black Gull before her last voyage? A. I have been approximately two months master on the Black Gull.

Q. Only two months. A. Yes, sir.

• • •

[363] Q. Captain, going back to the last voyage of the Black Gull, at the time of her stowage, the stowage was laid out by Captain Hollaar of Black Diamond Steamship Company, was it not? A. Yes, sir.

Q. She loaded at the two German ports of Hamburg and Bremen first, did she not? A. Yes, sir.

Q. And there general cargo was stowed in her holds? A. Yes, sir.

Q. And then she proceeded to Antwerp? A. Yes.

Q. And there other general cargo was loaded in her holds? A. Yes.

Q. And naphthalene was loaded on the ship's deck, [364] is that not correct? A. Yes, sir.

Q. The stowage of the naphthalene on deck was laid out by Captain Hollaar, as to where and how it was to be stowed, is that not true? A. Yes, sir.

Q. And then he showed you how he planned to stow the naphthalene, did he not? A. Yes, sir.

Q. And you approved it. A. Yes, sir.

Q. Then the vessel proceeded to Rotterdam and at Rotterdam——

(Witness nods head)

Q. Answer audibly, Captain, if you will. A. Yes.

• • •

Q. And at Rotterdam, in addition to general cargo, some more naphthalene was stowed on the ship's decks? [365] A. Yes, sir.

Q. Captain, how many tons of naphthalene were stowed on the decks of the Black Gull? Do you have your log book? A. I can produce them.

Mr. Longley: The manifest, I suppose, would show it.

Mr. Pyne: The manifest, but I don't think that will be in the log book.

Mr. Longley: Well, let us have the manifest.

A. I can take the cargo plan.

• • •

[366] Q. Captain, I lay before you a stowage plan heretofore marked Libelants' Exhibit 11-A, which you may examine at any time you wish (handing to witness). A. Thank you.

(The interpreter speaks with the witness.)

Q. Now, can you tell us first, Captain, how many bags of naphthalene were stowed at Antwerp?

(Witness examines)

Q. And the tonnage that was then there stowed on the deck, if you can get it from that plan. A. There was on the aft deck abeam of No. 4 hatch, was 605 bags, approximately 61 tons.

Q. Approximately how many tons? A. 61.

Q. 61 tons? A. Yes.

Q. And how many tons were stowed forward? A. That was all stowed on the after deck, 61 tons at Antwerp.

Q. There were only 61 tons stowed aft at Antwerp? A. Yes.

(To the interpreter) Yes.

[367] Q. And then at Rotterdam how many bags and how many tons of naphthalene first were stowed on the after deck? A. On the after deck was stowed 210 bags of naphthalene, 203 tons.

Q. Now, there is something wrong. A. No, 2,010 bags.

Q. 2,010 bags weighing 203 tons? A. Yes.

Q. And where on the after deck were those bags stowed? A. That was stowed further back from the naphthalene from Antwerp.

Q. And how many bags and tons of naphthalene were stowed forward at Rotterdam? A. 3,333 bags, 305 tons.

Q. So that when you eventually sailed from Rotterdam the only naphthalene you had forward were those 3,333 bags stowed at Rotterdam? A. Yes, sir.

Q. While aft you had the 2,010 bags—was it—— A. Yes, sir.

Q. ——stowed at Antwerp—and what was the other number of bags? A. 605.

[368] Mr. Pyne: 605 bags stowed at Antwerp.

Q. Yes, 605 bags stowed at Antwerp and 2,010 bags stowed at Rotterdam. A. Yes, sir.

• • •

[371] Q. What is this here (indicating)? A. That is a masthouse.

Q. And a masthouse, and by No. 5 hatch? A. Yes, sir.

Q. How close to the poop did the stow of naphthalene extend? A. It was about the same passage in the aft part, or close to the poop as it was to the boat deck.

Q. Well, I do not want to deceive you, Captain. You may have forgotten there were some barrel cargo back there, did you? Wasn't there? Don't you remember some chemicals back there? A. There was no chemicals there.

• • •

[373] Q. Again you had a solid stow of naphthalene from a point approximately 3 feet aft of the ladder shown in this drawing—— A. Yes.

Q. ——to a point approximately 3 feet forward of the ladder aft extending up to the deck over the poop? A. Yes, sir.

The Court: And there were no barrels of chemicals on either side?

The Witness: Not on the sides.

Q. Well, where were the barrels of chemicals? A. They were in the after part of the No. 4 hatch, close up to the front of the masthouse.

Q. Was that elevated somewhat from the deck then? A. The same height of the deck.

Q. Oh, the same height as the deck? A. Yes.

Q. Now, dealing with the masthouse, is that also where your winches were? A. The winches were on top of the masthouse.

Q. How high was the masthouse? A. I would say about close to 8 feet, 7 or 8 feet.

Q. Now, Captain, there was no covering of any kind over the naphthalene, with the exception of [374] rope slings, isn't that true? A. Right, sir.

• • •

[384] Q. Now, Captain, I want to deal with the voyage from Rotterdam over to the point where the fire broke out. It was a July voyage with a hot sun, was it not? A. (In English) I won't say it was hot but it was rather warm, but I have all the temperatures, if you would like to see them.

Q. It was what?

(Answer read)

Mr. Stonebridge: Might I suggest that the [385] witness be permitted to refresh his memory from the log?

Mr. Longley: I told him that he could refresh his memory in any way that he wished from the log—where is the log? He had it this morning.

Q. Captain, I want you to feel when I get through—I want to be absolutely fair to you because I recognize you as an upright man. I do not want you to feel I am criticizing you in any way. A. (In English) Thank you.

Mr. Pyne: If I may interrupt here, your Honor, the Capain has compiled in Norwegian and checked with the log book the temperatures as recorded in the log book day by day and watch by watch, they record them watch by watch while she is under way, but only at noontime while she was in port—the temperature and the wind conditions from the time they started to load their cargo at Antwerp until the last entry in the log books on the date of the disaster.

Mr. Longley: That is satisfactory.

Mr. Pyne: And Captain Lynner has translated that Norwegian into English and it might be just as well now if we could present those and have the Cap-

tain identify them, and Captain Lynner identify the translation.

[386] Mr. Longley: That is all right. You do not have to translate figures.

Mr. Pyne: Well, there is a lot of it in Norwegian and they are all centigrade temperatures, I might add, your Honor (handing).

Mr. Longley: Thank you.

By Mr. Longley:

Q. Captain, have you prepared that summary of the temperatures (handing to witness)? A. (In English) Yes, sir.

Q. Now, where were those temperatures taken, Captain? A. (In English) It was taken on the bridge.

Q. In the shade on the bridge? A. (In English) In the shade, yes.

Q. You have no record of the temperatures out in the sun? A. (In English) No, sir.

Mr. Pyne: May I ask now that the two documents be marked in evidence? I suggest they be marked as one exhibit A for the Norwegian, prepared by the captain, and B for the English as translated by Captain Lynner.

(Marked Petitioners' Exhibits D-1 and D-2.)

• • •

[387] Q. Dealing with Petitioners' Exhibit D-1, these columns (indicating) have certain figures at the top, 0 to 0400—that means from midnight to 4 a.m. A. (In English) Yes, sir.

Q. And the other times—you keep time up to 2400, meaning, I suppose, midnight? A. (In English) Yes.

Q. And these temperatures are in centigrade, are they not? [388] A. (In English) Yes, sir.

Q. Then during the course of the voyage you had a little engine trouble, did you not, Captain?

Oh, by the way, what has happened to the log book?

Mr. Longley: Don't you want to let him have it?

A. (Through the interpreter) We had no damage to the engine. We just had shifting of a valve, fuel oil valve.

Mr. Pyne: If it is not going to interrupt the proceedings, your Honor, I have presented both the rough deck log and the smooth deck log book and I will either offer them now for identification or in evidence.

Mr. Longley: Whichever you prefer—I don't care.

Mr. Pyne: I will offer them both in evidence, your Honor.

Excuse me a minute, Captain, I will give them back to you.

(Witness hands to Mr. Pyne)

Mr. Pyne: I am offering first the rough deck log book—I think this had better be separately marked.

[389] (Marked Petitioners' Exhibit E.)

Mr. Pyne: Now, may I also offer in evidence the final deck log book, sometimes referred to as the smooth deck log book, which I am certain, based on Captain Lynner's translation, is merely a copy of the entries in the rough log book, set up in smooth, final form.

(Marked Petitioners' Exhibit F.)

By Mr. Longley:

Q. Do you find the entry, Captain, dealing with your engine trouble? A. (In English) Yes, sir.

Q. Tell us about when it was.

Mr. Pyne: Will you give us the date, too, Captain?

The Witness: (In English) That date was the 14th July.

The Interpreter: "13.18, stop for changing of a fuel oil valve."

Q. And how long did you have your engines stopped? A. (In English) Twenty-one minutes.

Q. And was that the only stoppage of your engines during the voyage, Captain? A. (Through the interpreter) No, we had two small stops later on the same day, that is, "Stop at 17.08 [390] to 17.14, and 19.05 to 19.13."

Q. Those three stoppages were on the same day? A. (In English) Yes.

Q. Are those the only stoppages of your engines during the voyage? A. (In English) Yes.

Mr. Pyne: May I at this time, your Honor, state for the record that Mr. Zisgen has asked me whether these log books were the same ones produced and marked at Oslo on the depositions last August, and I replied in the affirmative that they are, and they were marked for identification at Oslo in August.

Q. Your ship is powered with diesel engines—was she not? A. Yes.

Q. Let me see—you were a single screw ship? A. (In English) Yes.

Q. You had what, two main engines or one? A. (In English) One main engine.

Q. So that when that one main engine had to have something done to it, that is, to have new valves put in, you were without motive power during that period? A. (In English) Yes, sir.

Q. Now, your exhaust gases from your diesels [391] went up through a funnel, did they not? A. (In English) Yes, sir.

Q. When your engines started up or when there is any difficulty with your engines, then you have sparks from your funnel, do you not? A. (Through the interpreter) Very seldom.

Q. On this voyage of the Black Gull, isn't it true that you had sparks coming from your funnel? A. (Through the interpreter) I didn't see any as far as I remember.

Q. Weren't sparks reported to you by one or more of your officers? A. (Through the interpreter) Not that I can remember.

Q. Well, going forward with your voyage, there came a time when you fixed your position off Nantucket Shoals Lightship, isn't that true? A. (Through the interpreter) Yes.

Q. When was that, Captain? Look in your log book. A. (After examining) (In English) 19.24 passed Nantucket 8 miles off.

Q. And then having fixed your position at a point 8 miles off, you then laid a course for Ambrose, did you not? A. (In English) Yes, sir.

• • •

[392] Q. And then at what hour was it that fire broke out in your cargo, Captain?

Look in your log book any time you wish. A. (In English, after examining) It was about 2300, a little after 2300.

Q. And what was the position of your ship at that time by latitude and longitude? You have it in your log book, I believe, Captain. A. (In English) No, I haven't got it. I have in there an abstract.

Mr. Longley: He wants his abstract—perhaps he means his protest.

The Witness: (In English) Pardon me——

Mr. Pyne: He is talking about the maritime declaration.

The Witness: (Through the interpreter) In the maritime declaration.

Mr. Longley: Do you have it in Norwegian?

Mr. Pyne: I have it in Norwegian, yes.

(Handed to the witness)

The Interpreter: Do you want me to translate it?

Mr. Longley: All right, give it to us in latitude and longitude. I don't think that would [393] need a translation, however.

The Interpreter: "When the accident occurred on July 18, 1952, the ship had passed Nantucket Lightship at 19.24 and about 3½ hours later the accident occurred."

Mr. Pyne: May I for the record, your Honor, state that what we have been referring to here as a maritime declaration is the investigation made by the Norwegian Government authorities, much similar, according to my information, to what our Coast Guard Board of Investigation would be into accidents of one kind or another.

Q. Well, getting to the point, what was the position of the ship?

The Interpreter: The position at that time was 40 degrees 30 minutes north latitude, and 71 degrees west longitude, according to the Captain's estimate.

Q. Captain, where were you when the fire broke out? A. (In English) I must have been in my cabin.

Q. Did somebody come and advise you of it? A. (In English) The third officer advised me.

Q. By coming to your cabin? A. (In English) Yes.

[394] Q. And then what did you do, Captain?

Mr. Pyne: May we have an answer to that question "by coming to your cabin"?

(Record read by the reporter)

Mr. Pyne: Thank you.

A. (In English) Then I ran out on deck, on the bridge, and had a look to where the fire was.

Q. What did the third mate tell you when he came to your cabin? A. (In English) The exact words I can't tell, but he said there was fire in the naphthalene bags on the port side.

Q. So you immediately went to the bridge and you went out on the flying bridge on the port side, did you? A. (In English) I went out on the lower bridge and I ran over on the sun deck, I think, and saw the smoke and the fire.

Q. Where was it burning? A. On the port side of No. 4 hatch.

Q. In relation to the bulwarks and the hatch coaming, where was it? It was about halfway between, Captain? A. (In English) Yes, about halfway between, I [395] can say that but it looked like this (demonstrating), and then I had to run up on the bridge again.

Q. I did not understand that.

The Interpreter: "I just had a quick look and then I ran up on the bridge again."

Q. Now go on, Captain, and tell us just what you did and what you saw in relation to this fire. A. (In English) I saw dense smoke, dark——

The Witness: Can I take it in Norwegian?

Mr. Pyne: Oh, yes, questions and answers both in Norwegian.

(The witness speaks with the interpreter in Norwegian.)

A. (Through the interpreter) I saw very dark smoke and little flame, and then I immediately ran back to the bridge and asked the man at the helm to put the rudder hard to port, stand by in the engine room and slow speed, signals with the whistle, and straightened the ship as to the course when we got the wind on the starboard side.

Q. You haven't told us anything yet, Captain, about fighting the fire. A. (In English) No, but then——

Mr. Pyne: Captain, would you please put [396] these questions as asked into Norwegian and then let the witness answer it?

(The interpreter speaks with the witness.)

A. (Through the interpreter) What I told was what happened in the first minute. At the same time I went back on the bridge, I order all hands to be called out.

Q. Who was in charge of fighting the fire, Captain? A. (In English) The chief officer and——

(Through the interpreter) The chief, second and third officers, they did most of the work——

The Witness: (In English) No, no.

A. (Through the interpreter) They were leading the work.

Q. You had hydrants on deck, did you not? That is hose connections? A. (Through the interpreter) Yes.

Q. How many streams of water were poured on the fire, Captain? A. (Through the interpreter) How many hose connections I could use?

Q. Well, how many hose connections did you use? A. (Through the interpreter) We used four.

Q. And your pumps were pumping water through those [397] hoses at full pressure? A. (Through the interpreter) With good pressure.

Q. And that operation of pouring water out of the four hoses onto the after cargo where the fire was burning started within a very short time after the fire broke out, isn't that true? A. (Through the interpreter) Yes.

Q. You found it impossible to extinguish the fire, did you not? A. (Through the interpreter) Yes.

Q. Now, the fire spread from its initial point where it broke out, outboard from the No. 4 hatch? A. (Through the interpreter) Yes, it spread out.

Q. And it spread forward, too, didn't it? A. (Through the interpreter) Yes.

Q. And then it spread over on the starboard side of the deck load of naphthalene, isn't that so? A. (Through the interpreter) Yes.

Q. And you soon had a wall of flame on the after end of your ship extending high into the air, isn't that so?

(The interpreter speaks with the witness.)

The Interpreter: And then from side to side?

(Question read)

[398] A. (Through the interpreter) Yes, there was a wall of fire there but it was mostly smoke. The fire was low on the bags.

Q. Captain, at the point where the fire broke out was over No. 4 'tween-deck, was it not? A. (Through the interpreter) Yes.

Q. There was no cargo stowed in No. 4 'tween-deck, was there? A. (Through the interpreter) Yes, there was.

Q. There was cargo? A. (Through the interpreter) There was.

Q. Well, let us see the stowage plan.

I lay before you Libelants' Exhibit A (handing to witness).

(The interpreter speaks with the witness.)

Q. Oh, you did have this lot (indicating)—I thought the end of the hold was there. You had 100 cases of—what is this? A. (In English) Armagnac Brandy.

Q. So the only thing in No. 4 'tween-deck was 100 cases of brandy? A. (In English) Yes.

[399] Q. You agree, do you not, Captain, that there was no cargo in No. 4 'tweendeck that could have caused this fire which you found in the naphthalene? A. Yes.

Q. And there was no electric connection in the vicinity which might be defective which could have caused this fire?

A. There were no electric connections in the 'tweendecks.

Q. And there were no electric connections on deck in the way of No. 4, either, were there?

Mr. Pyne: I think there may have been a misunderstanding here about this word as translated, electric connections, and what is meant by it.

The Court: The witness used the word "connections", so he understood it. The interpreter said "conduits" but the witness said "connections" so he understood.

A. No, not in the vicinity.

• • •

[400] Q. Do you or do you not know whether this commodity naphthalene is susceptible to spontaneous combustion? A. No, I do not.

Q. You do not know? A. No. As far as I know, it is not liable to spontaneous combustion.

Q. Captain, the only possible way that this naphthalene could have become ignited was by some agency outside of itself; isn't that so?

Mr. Pyne: Again, your Honor, I say that is not a question for the master of the ship. That is distinctly a question for a chemist, and I say that there is no groundwork laid here for that question.

The Court: I think so. You see, he said so far as he knew it was not subject to spontaneous combustion.

Q. Captain, I will ask you to assume it is not [401] susceptible to spontaneous combustion. On that assumption do you know of any possible cause of this ignition except by the application of heat from some outside source?

The Court: I do not see how we could possibly get an informative answer to that question. If he

understood what spontaneous combustion means, he has answered, and it either has to be from inside or outside.

Mr. Longley: All right, I withdraw the question.

• • •

[422] Dr. Chester A. Snell

Cross-examination by Mr. Stonebridge:

Q. Doctor, if I recall correctly, you said that according to an article you recently read, the temperature of a burning cigarette approaches 500° Fahrenheit; is that correct? A. No, I said a minimum temperature.

Q. A minimum temperature of 500° Fahrenheit. A. That is the temperature at the outside when there is no draft being drawn on it.

Q. Doctor, what is the ignition point of pure naphthalene? A. That is rather indefinite. It is about five degrees higher than the flash point, but like the flash point it depends on the method of test. You see, there are several different pieces of apparatus for testing flash and fire point.

Q. Sir, are you familiar with Chemical Engineers Handbook by Perry, Fiftieth Edition? A. I am, yes.

Q. If that particular work gave the ignition temperature of pure naphthalene as 1000 in 38° Fahren- [423] heit, would you say it is probably correct? A. No, I would say you are quoting the autogenous temperature that is the temperature at which it will ignite in flame or fire.

Q. This in effect you are saying is the dull ignition point? A. Yes, it is not the fire point.

Q. Doctor, in your studies by any chance did you look at the United States Coast Guard regulations with respect to naphthalene? A. No, I did not.

• • •

Deposition of Peter Didrick Herlofsen

[425] Mr. Pyne: The first one is Peter Didrick Herlofsen.

"Q. Mr. Herlofsen, where do you reside? A. Gyldenlovsgt 48, Oslo.

"Q. What is your occupation, Mr. Herlofsen? A. I am a ship owner.

"Q. And as a ship owner, do you have an association or connection with any particular firm, corporation, limited society or steamship company of any kind? A. I am one of the directors of Sigurd Herlofsen & Co. A/S.

"Q. Will you tell us whether that company is a corporation, limited society, partnership, and where its principal office is? A. It is a limited company, with principal offices in Drammensveien 88b.

"Q. Is that the premises where we are now? A. Yes, that is right.

[426] "Q. What, please, is the type of business that is done by that company? A. That is, in short, ship-owning business.

"Q. And do they act as an agent or manager for owners or vessels? A. They act as managers for all the companies that own ships in our concern.

"Q. That is, all the companies that do business through Sigurd Herlofsen, for those companies or vessels owners Sigurd Herlofsen & Co. A/S acts as a manager, as you call it? A. Correct.

"Q. And as a manager, will you tell us precisely what type of thing they do for the ship owner? A. Well, they do all the work necessary with regard to operations of the ships.

"Q. And, for example, what would that be? A. For example, at Sigurd Herlofsen & Co.'s office they employ the crew, they arrange the insurance, arrange repairs, maintenance, chartering, new building contracts, by-laws, etc.

"Q. Do you know who the owner was of the motor vessel named and called the 'Black Gull', who the owner of

that vessel was in June and July, 1952? [427] A. That was Skips A/S Jolund, registered in Moss, Norway.

"Q. And is that company, which you have just mentioned as being the owner, a corporation, limited company or partnership? A. A limited company.

"Q. Are you personally in any way connected with that company? A. Yes.

"Q. In what way or capacity? A. Since 1931 I have been a member of the board, and since 1953 I have been chairman of the board.

"Q. And when you say board, are you referring to the board of directors of that vessel owned by that company that you mentioned, that limited liability company of Moss? A. Yes.

"Q. Did you personally yourself ever go aboard or see the motor vessel 'Black Gull'? A. Yes, on the trial trip.

"Q. Do you know when and where the vessel was built? A. I will have to refresh my memory—yes, it was built August 1949, in Landskrona, Sweden.

"Q. Was that month of August 1949 the month and year of the completion of the vessel? [428] A. Yes, and at that time she was called the S.S. 'Herborg'.

"Q. And was it during that month that you were aboard of her for the trial trip? A. Yes.

"Q. And where was the trial trip held? A. In Landskrona, where the ship was built.

"Q. Subsequently to that boarding of the vessel, were you again at any time on board her? A. No.

"Q. I am going to show you, Mr. Herlofsen, a paper which has already been marked 'Jolund Exhibit 1 for identification, August 1, 1955', and I will ask you whether or not you can identify that paper and tell me what it is? A. That is what we call a general arrangement plan of the 'Black Gull.' "

That document I believe has already been marked.

Mr. Zisgen: As Libelants' Exhibit 17.

• • •

"Q. And on the basis of what you saw of the vessel when you were aboard of her at the time you have [429] stated, and to the best of your recollection and belief, is that plan a true and correct diagram plan and arrangement of the vessel? A. To the best of my belief it is.

"Q. Do you recall, Mr. Herlofsen, when the name of the 'Herborg' was changed to the 'Black Gull'? A. That would be—wait a minute, I have to refresh my memory. That would have been shortly prior or after the first time charter with the Black Diamond Line.

"Q. And to the best of your recollection—approximately, if you cannot state it accurately or exactly, approximately will do—was the first charter of the vessel made to the Black Diamond Line? A. The first charter was made to the Black Diamond 11th May 1949.

"Q. You use the expression Black Diamond Line. I am asking you whether or not that charter was made to Black Diamond Steamship Corporation, New York? A. I might have made a mistake, but that will be seen in the charter, which you may have a copy of.

"Q. I am going to show you another document, but I first will ask the reporter to make it as an exhibit for identification."

[430] It was marked as of that date Exhibit 10.

"I am going to show you a document which has just been marked 'Jolund Exhibit 10, today's date' and I will ask you if you can identify that document? A. Yes, that is a copy of a charter party between Skibs A/S Jolund and Black Diamond Steamship Corporation.

"Q. The date of it is what? A. 3rd September 1949.

"Q. And I notice down at the bottom there are some initials. Can you tell me whose initials they are? A. The one on the left is S. H., my father's initials.

"Q. And your father's full name? A. Sigurd Herlofsen.

Deposition of Peter Didrick Herlofsen

"Q. And at the time of that charter, what connection did your father have with Sigurd Herlofsen & Co.? A. He was the managing director of Sigurd Herlofsen & Co.

"Q. And is your father now deceased? A. He is deceased.

"Q. At the time this charter was made, you, however, were connected with the company? A. I was director in Sigurd Herlofsen & Co.

"Q. As of today you are the managing director of Sigurd Herlofsen & Co.? [431] A. Correct.

"Q. Having in that capacity succeeded your father? A. Correct."

Now that charter was then offered and marked, and I see that it has already also been marked in evidence here previously.

The Court: Libelants' Exhibit 42.

• • •

"Q. Insofar as Mr. Herlofsen is concerned, I know I do not properly pronounce the name Skips A/S Jolund, with during the course of the management of that ship by Sigurd Herlofsen, what does the owning company, which for short I will call Jolund, actually do? A. The company itself is not active in business as long as the management is left to Sigurd Herlofsen & Co. A/S."

• • •

"Q. When you say they are not active, what passes, if anything, back and forth between the owner company Jolund for short, and Sigurd Herlofsen & Co.? A. I can put it this way. All remittances coming in for any earnings made by the vessels owned by Jolund, [432] goes into Jolund's account. All payments made for disbursements are made out of Jolund's account, but everything is supervised by Sigurd Herlofsen & Co., and the board of directors of course every

year in the Jolund agree the yearly account and all the statements.

"Q. At the time the 'Black Gull' was first put in operation or service was she, and during the course of her building was she subject to or placed in any classification or society?"

There is a mistake in the typing there. The answer is "Yes," and the next question is, "What society?" A. The Norwegian Veritas.

"Q. Do you know what class the vessel was given by that society? A. The very best class.

"Q. And do you know whether or not that class was at any time throughout the operation of the vessel, and down to and including the date of 8th July 1952, in any way changed, altered or withdrawn? A. No.

"Q. Was that class throughout the time mentioned, maintained? A. It was maintained.

[433] "Q. Can and will you tell us, Mr. Herlofsen, you have already having stated that Sigurd Herlofsen selects or engages, or appoints, rather, the members of the crew, can you tell us what the system of Sigurd Herlofsen is, and was particularly in June and July and prior to that in connection with the selection of officers——"

With June and July, 1952 was left out, and with permission I will insert the year 1952.

"— and was particularly in June and July 1952, and prior to that in connection with the selection of officers and crew, and their engagement or appointment? A. We have our own crew department, which at that time was headed by the head of our Maritime Department. That man employed all the captains and deck officers, while the Technical Department employed all the engine staff. With regard to the ordinary crew, they were more or less selected by an assistant in the Crew Department.

"Q. Now you have mentioned the man who selects the deck officers. Who was that man? A. That was Captain Wellton.

Deposition of Peter Didrick Herlofsen

"Q. Is he presently employed by Sigurd Herlofsen? A. He is retired.

[434] "Q. And at the time in June and July 1952, did Captain Wellton have any particular title here in your organization of Sigurd Herlofsen & Co.? A. The literal translation is 'inspector.' Being the shipowner's surveyor, he could be called a marine superintendent.

"Q. Did Sigurd Herlofsen & Co., or did it not, in connection with the officers, master and other deck officers, engineers and other members of the crew, follow the system which you have just outlined insofar as concerned the officers and crew who were serving on the 'Black Gull' in June and July 1952? A. Yes, we did.

"Q. From the time that the charter was entered into, a photostat of which charter has been marked"——

I will refer now to the libelants' exhibit on the trial here, Exhibit 42——

"Did the 'Black Gull' remain under that charter? A. That I cannot answer. There may have been a different charter drawn up, as more or less direct continuation of that charter exhibited, but I cannot answer that, right now.

"Q. Would you be able, from your records here in the office, to ascertain that, and tell us today whether [435] that is the situation? A. I could probably do that.

"Q. I wish you would. A. If it is a ten years charter it is the same charter. Then I have to correct the previous statement.

"Q. Well, then, I will again, to make sure we are straightening the record out, ask you whether or not the 'Black Gull' continued in operation under this charter, Exhibit 10 for identification, from the time that charter was entered into, down to and including the 18th day of July 1952? A. That is correct.

"Q. Now throughout that time, what, if anything did Skips A/S Jolund and/or Sigurd Herlofsen & Co. do in connection with the selection or engagement of any stevedores? A. Nothing at all.

Deposition of Peter Didrick Herlofsen

"Q. Did either the owner company mentioned or Sigurd Herlofsen & Co. ever receive any bills or make any payments to the stevedores? A. None whatsoever.

"Q. Did either the owner company or Sigurd Herlofsen & Co. at any time throughout that charter have any dealings with or communications to or from the [436] stevedores? A. None whatsoever.

"Q. Throughout that period of time, did either the owner company Jolund or Sigurd Herlofsen & Co., or any of its officers, directors or employees, take any part in or have anything to do with the loading and stowage of cargoes or the discharge of cargoes on the 'Black Gull'? A. Nothing whatsoever.

• • •

"Q. You have stated, Mr. Herlofsen, that no officer, director or employee of either Skibs A/S Jolund or Sigurd Herlofsen & Co. had anything whatever to do with loading, stowage or discharge of cargoes. I am asking you whether or not the master of the vessel had any part in, or anything to do with the loading or stowage of cargoes—the master being an employee, of course, as you have already testified, of the owner? A. I think that question should better be asked of Captain Svendsen."

• • •

[437] "Q. Throughout the period of the term of the charter, Libelants' Exhibit 42, was Skibs A/S Jolund, the owner, or Sigurd Herlofsen, advised from time to time, or given any information as to what cargoes were proposed to be loaded on the 'Black Gull'? A. No, never.

"Q. Were they given any information as to what cargoes had been loaded and carried on the 'Black Gull'? A. You mean before she burned out?

"Q. That is right. Throughout the time of the charter. A. No.

"Q. Throughout the time of that charter, and the operation of the vessel under that charter, Libelants' Exhibit

42, was any information sent to the owner Skips A/S Jolund or to Sigurd Herlofsen & Co. as to how or where cargo was to be loaded or stowed on the vessel? A. Never.

"Q. Or was that owner or managing company ever given any information as to where or how cargo had been loaded, stowed and carried on the vessel? A. Never.

"Q. Throughout the time of that charter, was [438] that owner Jolund Sigurd Herlofsen & Co. sent or given or received copies of any bills of lading? A. Never.

"Q. Throughout the time of the charter, were they sent or given any copies of manifests? A. No.

"Q. Do you know, Mr. Herlofsen, where—that is personal, physical location—the officers and directors, or any persons with managerial authority of Skips A/S Jolund were during the months of June and July 1952? A. I do not know their whereabouts at that time.

"Q. Do you know whether any of them were on board the 'Black Gull' at that time? A. They were not.

"Q. How are you able to state they were not on board the vessel, at the same time stating you do not know where they were? A. I do not know where they were, because they would have been on the ship's manifest, or rather the captain would have advised us if they were aboard.

"Q. You received no such advice? A. I received no such advice.

"Q. Similarly, with respect to the officers, directors or other officials or persons to whom managing [439] duties of any kind were assigned by Sigurd Herlofsen & Co., can you tell us or do you know where in June and July 1952 these persons were? A. My father died in May 1952. Personally I was up in Helsingfors in the Olympic Games when I heard about the disaster. With regard to the rest of the directors, I obviously cannot tell you that now.

"Q. Do you know whether any of the directors or other persons mentioned were on board the 'Black Gull'? A. They were not.

Deposition of Peter Didrick Herlofsen

"Q. How is it you can state they were not on board? A. For the obvious reason, if they had been on board they would have told me.

"Q. Are you in contact with these persons from time to time and more or less continuously in connection with the operation of the ships? A. We are continuously in contact with our board of directors in directors' meetings.

"Q. Now you have stated, Mr. Herlofsen, that Sigurd Herlofsen & Co. in connection with the vessels it manages, arranges for repairs and maintenance? Will you tell us what the company did in that connection so far as concerned the 'Black Gull'? A. The only thing I can say, she was kept up [439a] to the usual standards of our vessels."

• • •

[440] "Q. Now you have stated, Mr. Herlofsen, that Sigurd Herlofsen & Co., in connection with the vessels [441] it manages, arranges for repairs and maintenance. Will you tell us what the company did in that connection so far as concerned the 'Black Gull'? A. The only thing I can say, she was kept up to the usual standard of our vessels.

"Q. Whenever repairs were required or recommended by classification societies or surveyors, were they not carried out? A. They were carried out."

With Mr. Stonebridge's permission, I will read one cross-question by him:

"Q. To clarify the record, sir, your tongue slipped. Was the 'Black Gull' built in 1948 or 1949? A. She must obviously have been built in 1948. I made a mistake. She was delivered in 1948."

• • •

Mr. Stonebridge asked:

[442] "Did I understand you to say that Herlofsen & Co. was appointed the managing owner by Skibs A/S Jotund, or the manager?

Deposition of Peter Didrick Herlofsen

"Mr. Herlofsen: We use the word 'disponent'.

"Mr. Stonebridge: Will you be able now to produce these by-laws?"

• • •

"Mr. Herlofsen has now Presented a printed paper in Norwegian, which he states are the by-laws of the Jolund Co., called for by libelants per proctor. I ask that it be marked for identification"——

But with permission of counsel, because a translation was placed in the record of the only section with which the parties were concerned or interested, I will not offer the whole by-laws, unless somebody requests it, but I will read into the record a translation of that one pertinent part.

The Court: That is good.

[443] Mr. Pyne: The translation reads:

"The firm of Sigurd Herlofsen & Co. A/S are, as long as they are shareholders, entitled to be the manager of the company—however, subject to the provisions of the Shipping Company Act."

Now do you care to read some cross, Mr. Zisgen?

Mr. Zisgen: Yes. This is still, your Honor, cross-examination of Mr. Herlofsen at page 21, about two-thirds of the way down the page:

"Q. Did Sigurd Herlofsen & Co. have any agents at the ports of Hamburg, Bremen, Antwerp or Rotterdam, in June and July 1952? A. No agents that was connected with the Black Diamond Line service.

"Q. Did it have any agents at all? A. Naturally, when you come in with a tanker you have to appoint agents.

"Q. Did you not also have to appoint agents when general cargo ships of Sigurd Herlofsen & Co. were to enter a port? A. That should apply to the same thing. Any ship would have to appoint their own agents.

Deposition of Peter Didrick Herlofsen

"Q. What was the situation with respect to ships chartered to Black Diamond Line? [444] A. There the agency representation was completely in the hands of the Black Diamond Line.

"Q. Do I understand by that that the agents of Black Diamond Steamship Corporation acted also as agents of Sigurd Herlofsen & Co.? A. No, I would not say that.

"Q. Then I must have misunderstood your earlier answer. You told us that when a general cargo ship of Herlofsen is to enter a port, she must have an agent. I understand you to say also that if that general cargo ship was under contract to Black Diamond, but what did you say—tell me that. A. When a ship under charter to the Black Diamond comes into port they use Black Diamond's agents exclusively.

• • •

[445] "Q. Now, is there not at the same time an accounting by Herlofsen, as manager, to Jolund as owner, of what Herlofsen has done with the moneys received for Jolund's account, and the moneys paid out for Jolund's account. A. No, you see there is no money paid from Jolund to Sigurd Herlofsen, or vice versa. Every earning that comes in for Jolund's ships goes into Jolund's separate account. Any payments made goes out of Jolund's separate account."

• • •

"Q. Did the 'Black Gull' have a single master during all of the period covered by this charter, Jolund Exhibit 10? A. No, she had different masters.

"Q. And when her earlier masters were relieved by their successors, did they not come here to report to Sigurd Herlofsen & Co.? A. Yes, they always came to my office when they [446] left the ship.

"Q. Did they not report to you in general? A. In general, they reported to my Maritime and Technical Department.

Deposition of Peter Didrick Herlofsen

"Q. That report was what—an oral report, a written report, or both? A. It was not written, it was more or less an informal talk.

"Q. And when you say your Maritime and Technical Department, just whom do you mean? A. You mean at the time of the disaster?

"Q. Let us say between the time the 'Black Gull' was first delivered to Black Diamond under charter, Exhibit No. 10, and the end of June, 1952. A. The head of my Maritime Department was Captain Wellton.

[447] "Q. He is the man you mentioned earlier? A. Correct. Then we had two men in the Technical Department, Mr. Lie and Mr. Rambech.

"Q. During the whole period they were the heads of those two departments? A. Mr. Rambech was not with us when the ship was delivered. He came later.

"Q. Both of them, however, were in your employ in July, 1952, as heads of their respective departments, and had been for some period prior to that, is that correct? A. That is correct, with the exception that Mr. Rambech was sick at that time.

"Q. And who looked after the work in his absence? A. Mr. Lie, who had had all that work with the construction of the ship before.

"Q. And it was to one or the other of these three men that masters returning to Oslo after replacement reported? A. Well, he talked to me when he came in, and with my bookkeeping department regarding his accounts, with the crew department regarding the crew, and if necessary, my insurance department with regard to insurance.

[448] "Q. And was it also the practice of your masters to see you and the heads of these departments when they came home on leave? A. If we were there, they usually were brought in to us.

"Q. How often do your masters as a rule get leave? A. They do not get leave, they just take a holiday once in a while.

Deposition of Peter Didrick Herlofsen

"Q. Is that any particular period, you could say fairly repeated the interval at which they would take leave? A. No, that is almost impossible.

"Q. Some took it more often than others? A. And some got sick, of course.

"Q. Was it also the practice of the officers, other than the master, to come in and report to you and the heads of your departments at various times? A. Whenever they left the ship and passed through Oslo on their way to their homes, they usually dropped in.

"Q. Now, if you can recall, what sort of thing did they usually discuss with you, whether master or other officers? A. Well, if they called on me the first thing I say is 'Do you like your ship?', and if there is [449] any complaint they were sure to bring it out. They usually discussed the length of their leave, and always used to ask for a better position. We generally made a little pleasant conversation.

"Q. Then after seeing you they went to see the heads of these various department? A. They might have seen the heads before they saw me, depending on whether or not I was in or not.

"Q. And I suppose that they discussed with the head of each department such features of their voyages as concerned the respective departments? A. I take that for granted.

"Q. You do not know? A. I take it for granted.

• • •

"Q. In telling Mr. Pyne that you knew no officers or directors of Jolund were on board the 'Black Gull' in June and July 1952, I understand you to say that you knew that because if they had been they would have been listed on the manifest or the passenger list? [450] A. I said, or rather the captain would have advised us.

"Q. And you now wish us to understand that even if they had been on board, their names would not have appeared on the manifest or passenger list? A. I know they

were not on board, because every time one of the directors wants to make a trip they come to me and get a free passage.

"Q. That may be so, but that was not quite my question. A. No, that is correct. If they had been on board, we would have been advised by the captain some way or other about these people being on board.

"Q. I quite understand that that is what you are telling us, but I am trying to get the significance of your first statement about manfest and passenger list. A. I corrected that, and I said instead of manifest 'or rather the captain would have advised us that they were on board.'

"Q. And now my question is, having corrected that earlier statement, do you wish us to understand that had they been on board, the manifest and passenger list would not have shown it? [451] A. If they had been on board as passengers, the passenger list, the manifest or the crew list would definitely have shown it.

"Q. And you would have these lists here? A. I do not think we have, because as far as I can remember most of the papers went down with the ship.

"Q. Do you not have copies? A. I do not think so.

"Q. Is there any way in which you can make certain whether or not you do? A. I do not know where all the papers are, but we can try to find out.

"Q. Well, perhaps we can get at it this way: What papers do you customarily receive when one of your ships was being operated under charter? A. The only thing we got was a list from the captain regarding the passengers carried.

"Q. What was the purpose of that list? A. On the cost for one thing. That comes in. You have to figure out the victualing of the crew and passengers, and to enable us to collect passenger money from the Black Diamond Line.

"Q. Had it to do with the financial arrangements under the charter? [452] A. Well, of course, we have to collect passenger fare when the Black Diamond carry passengers.

"Q. For their food? A. Yes.

"Q. What, if anything, did you customarily receive when Herlofsen vessels were being operated under charter with respect to the cargo? A. Well, there was a fixed time charter rate.

"Q. Yes. Did you receive some report as to the total quantities of cargo carried? A. Whenever the Captain left the last discharging port he cabled us date of departure and actual tons carried. That is all we had.

"Q. Did you receive at the conclusion of each voyage under the charter a cabled report as to the total tonnage carried? A. No, at the beginning of the trip.

"Q. Then did you not mean to say that the Captain cabled you on sailing from loading port—his last loading port? A. That is correct.

"Q. You received no details of what cargo was carried? A. None whatsoever.

[453] "Q. In the charter party of the 'Black Gull' Jolund Exhibit 10"—that is Libelants' Exhibit 42—"you have excluded certain cargo, have you not? A. That is correct.

"Q. What assurance did you have with respect to any voyage, that cargo excluded by the charter was not in fact being carried? A. That would have been a breach of the charter party and could be sued.

"Q. But you were not interested in buying lawsuits, you were more interested in seeing the vessel was operated in accordance with the charter. A. Definitely.

"Q. How did you, and by you I mean Sigurd Herlofsen & Co., undertake to assure yourselves that the vessel was being operated in accordance with the charter? A. Well, of course, if you enter into a long agreement over ten years with a firm, there is naturally a mutual trust.

"Q. I would assume that that would be necessary, but did you not take some measures to assure you that your

trust was not misplaced? A. The captain on board the ship has a copy of the charter party.

[454] "Q. Yes, and what purpose would that serve? A. The charter party stipulates really what kind of cargo should not be carried.

"Q. Did you understand that Sigurd Herlofsen & Co. relied on the master of the ship to see that cargo which was forbidden by the charter was not loaded? A. We relied on the captain to that extent.

"Q. Did Sigurd Herlofsen & Co. have any agents at the ports of Hamburg, Bremen, Antwerp or Rotterdam in June and July 1952? A. No agents that was connected with the Black Diamond Line service.

"Q. Did it have any agents at all? A. Naturally, when you come in with a tanker you have to appoint agents.

"Q. Did you not also have to appoint agents when general cargo ships of Sigurd Herlofsen & Co. were to enter a port? A. That should apply to the same thing. Any ship would have to appoint their own agents.

"Q. What was the situation with respect to ships chartered to Black Diamond Line? A. There the agency representation was completely in the hands of the Black Diamond Line.

[455] "Q. Do I understand by that that the agents of Black Diamond Steamship Corporation acted also as agents of Sigurd Herlofsen & Co.? A. No, I would not say that.

"Q. Then I must have misunderstood your earlier answer. You told us that when a general cargo ship of Herlofsen is to enter a port, she must have an agent. I understand you to say also that if that general cargo ship was under contract to Black Diamond, but what did you say—tell me that? A. When a ship under charter to the Black Diamond comes into port they use Black Diamond's agents exclusively.

"Q. Then am I not correct in assuming that to the extent that an agent was required for the ship in a port, a ship

for charter to Black Diamond employed Black Diamond's agents as its agents? A. I think the charter party clearly stipulates that the appointment of agents for all purposes are in the hands of the Black Diamond Line.

"Q. Where do you find that? A. There may be a separate contract with Black Diamond and us. The only thing I can find, the charter party stipulates that the intended trade is Atlantic [456] Coast/North America/U. K./Continent/Hamburg/Bordeaux range, as the charterers or their agents shall direct. In other words, it says here that the ships should be in the hands of the charterers and their agents.

"Q. Then, unless there was some separate contract with Black Diamond, Herlofsen was using Black Diamond's agents as its agents at the ship's ports of call, is not that true? A. I would not put it exactly that way. As long as the charters have an agent that looks after the pilotage, clearance and stevedoring, there is no need for the owner to have an agent.

"Q. In effect, then, what you are saying is what I have just said, that Herlofsen was utilizing the services of Black Diamond's agents as its agents at the various ports of call? A. I would say there is no agreement whatsoever between Sigurd Herlofsen and the agents at the Black Diamond ports of call.

"Q. You say you would say that. Do you mean that by that there was not? A. There was no contract between any of the Black Diamond agents and Sigurd Herlofsen & Co.

"Q. And if the Black Diamond agents performed [457] any service for the Herlofsen ships, including the 'Black Gull,' their compensation then must have come to them from Black Diamond Steamship Corporation and not from Herlofsen? A. They got nothing from us.

"Q. You told us that once a year there was an accounting between Herlofsen and Jolund, is that correct? A. I

did not say once a year, but every year Jolund has to furnish its accounts.

"Q. Jolund has to furnish them? A. Jolund's accounts are written like this (pointing to a printed portion pasted into a book, being two printed sheets dated April 29, 1954).

"Q. I do not understand why Jolund must furnish an account. Is that an account which it must furnish to Herlofsen? A. That is an account that it furnishes to its shareholders, according to Norwegian law.

"Q. Now, what I was trying to find out was how frequently and in what form does Herlofsen, as manager, account to Jolund as owner? A. There is only once a year with Jolund's annual account.

"Q. Do I understand, then, that there is no [458] accounting from Herlofsen, as manager, to Jolund, as owner? A. The Jolund Company has separate books that are kept separately. It has separate bank accounts. These are audited once a year and then sent to the shareholders.

"Q. Yes, but Jolund as a company has appointed Herlofsen as a company to manage Jolund's ships? A. Correct.

"Q. Now, is there not at some time an accounting by Herlofsen, as manager, to Jolund, as owner, of what Herlofsen has done with the moneys received for Jolund's account, and the moneys paid out for Jolund's account? A. No, you see there is no money paid from Jolund to Sigurd Herlofsen or vice versa. Every earning that comes in for Jolund's ships goes into Jolund's separate account. Any payments made goes out of Jolund's separate account.

"Q. So that, if I understand correctly, we do not have a situation in which the moneys received go into the Herlofsen account in the first place? A. No. There might be a certain case where the agents abroad slips up and sends the money to Herlofsen instead of to Jolund, but then

the money [459] is immediately transferred to the Jolund account."

• • •

"Q. Are you yourself connected in any way with the Norwegian Veritas? A. No.

"Q. Does Sigurd Herlofsen & Co. have any representative on the directorate of Norwegian Veritas? A. Not as far as I know.

"Q. Does Skips A/S Jolund have any representative on the directorate? A. Not as far as I know.

"Q. The classification given by Norwegian Veritas to any ship relates to her fitness to sail as a ship, does it not? A. Correct.

"Q. It has no relationship whatever to her fitness for a particular cargo? A. There are different classes in Norwegian Veritas for that purpose.

"Q. By that you mean that there is a different classification for tankers, that is to say, than for general cargo ships? A. As far as I know, that is correct.

"Q. But it is true, is it not, that dealing with [460] general cargo ships alone, the classification relates merely to ability to sail safely, and not to fitness for a particular kind of general cargo? A. I would prefer you ask that question of Captain Svendsen. I think, of course, there is a difference in classification of a ship that carries ordinary cargo and reefer cargo, and I also think there are certain classifications for ships that carry fire extinguishing apparatus like $C. O_2$, but I am not sure.

"Q. You would prefer we asked Captain Svendsen—he knows more about it than you do? A. Definitely.

"Q. Now, you told us in general that the system which was employed by Herlofsen in the selection of officers and crews for the vessels which it managed, and you told us that that system was followed with respect to the employment of the officers and crew of the 'Black Gull'? A. That is correct.

"Q. Well, you do not mean us to understand, do you, Mr. Herlofsen, that every member of the crew beneath the rank of officer was personally selected by this Captain Welton? [460a] A. No. I said Captain Welton selected the captain and the deck officers. Our technical department selects the engineers, and his staff, while one of the employees in the crew department selects the ordinary crew.

[461] "Q. Well, now, the 'Black Gull' was not trading in and out of Oslo in 1952? A. No, she was not.

"Q. Are we to understand that if a member of her crew, a seaman or a messboy or steward, or someone in that category left the ship, or died at some port other than Oslo. did this employee of Sigurd Herlofsen go to whatever port that occurred at and select a man to replace him? A. If at all possible on the Black Diamond ships, being as close as they are, we, if time permits send the crew from here.

"Q. I am not speaking of a complete crew. A. No, just replacements.

"Q. And these, I take it, were usually of Norwegian nationality? A. They were.

"Q. We know that one of the messboys on the 'Black Gull' on the voyage commencing in July 1952 from Rotterdam was a Belgian? A. That is correct.

"Q. Was he selected by your company? A. No. I said that ordinarily, if time permits, we send replacements from Norway. If time does not per- [462] mit we have to take replacements from abroad.

"Q. And where you have to take replacements abroad, who is it who employs them? A. Then the Captain employs them.

"Q. And was that also true in June/July 1952? A. That has always been the custom.

"Q. And so far as you know, that custom prevailed at that time? A. Yes.

"Q. Then, in addition to relying on the master of your ship to see that no cargo not permitted by the charter was loaded, you also entrusted him with hiring replacements of

the crew if there was no time to send someone from Norway? A. Yes, because he was the man who could judge better than anyone else what he needed.

"Q. Where is Captain Wellton now? A. Retired, and living in Oslo."

Then Mr. Pyne stated for the record:

"If Mr. Zisgen so requests or desires, we will endeavor to produce Captain Wellton, and I ask Mr. Zisgen to state for the record, either now or before we leave Oslo, whether he desires Captain Wellton produced, because I do not want to hear any criticism later that he has [463] not been produced."

Now to that request there was no response, either then or at any other time.

"Q. You told us, Mr. Herlofsen, that you received no copies of the bills of lading for cargo carried on vessels chartered to Black Diamond, and no copies of the ships' manifests. Did you or did you not receive copies of stowage plans? A. No, we did not.

"Q. Throughout the period of the charter, Jolund Exhibit 11"—which is now marked Libelants' Exhibit 42—"do I understand that the 'Black Gull' was never in Oslo? A. Never during the charter with the Black Diamond Line.

"Q. Then how and by whom was Herlofsen advised that repairs were needed, or painting had to be done, or the vessel had to be drydocked or anything of that sort? A. Answering the last question first, we have a system whereby we drydock the vessels at certain periods. That we decide ourselves. With regard to repairs to be effected ashore, the Captain always has instructions to let us know well in advance what repairs he contemplates doing.

[464] "Q. And when he advises you that certain repairs are necessary or desirable, what was your practice? A. If the repairs are of major importance, we usually ask for bids from different yards. If the repairs are of a minor

nature, we give the Captain authority to perform the repairs best possible.

"Q. So there again you rely on your master in another respect? A. I cannot very well check my master's statement that the vessel needs painting. That must be to him to decide.

"Q. Now, necessarily, drydocking or major repairs involves withdrawing the vessel from service in the charter for a shorter or longer period? A. Correct.

"Q. Now, what was the practice of Herlofsen & Co. in June and July 1952, and before that, in advising the charterer that withdrawals were contemplated? A. Well, we always like to consult with the charterers before drydocking, because we wanted to find out which port was most convenient for the charterers.

"Q. And with whom in Black Diamond Steamship Corporation did you communicate? A. We just sent a letter or cable to the Black [465] Diamond office.

"Q. Where? A. In New York.

"Q. And what usually happened then? A. Well, they usually agreed on some port. We usually said we need to drydock the vessel within a certain period, we can do it either here or there at certain prices, what is most convenient for you?

"Q. And did you as a rule receive a reply from New York, or from one of the other ports? A. In certain cases, where it was drydocking to be performed in Europe, the Black Diamond Line in New York naturally consulted with their European agents, and we might have had some replies from them."

• • •

By Mr. Zisgen:

"I call for the production of the reports made to Sigurd Herlofsen & Co. by the master of the 'Black Gull' at the conclusion of the seventeen voyages prior to that of July

1952, on which, according to the list of shipments handed me by Mr. Pyne in Antwerp, the vessel [466] had carried naphthalene on deck, and also for any reports with respect to those voyages not made at the conclusion of them."

Mr. Pyne: Well, I will find the place in the record where that call was complied with, your Honor, for continuity. * * * I think it was during the examination of Captain Svendsen.

Mr. Pyne: If I may say this at this point, your Honor, and I do not think there will be any question or dispute about it, during the examination, as I recall it, of Captain Svendsen, a large volume of those reports was produced and marked for identification and made subject to examination by the cargo interests or the claimants, and then forms of the reports themselves were marked in evidence—they are in Norwegian except one, and on the Norwegian copy there was written in in English the translation of them, but I think perhaps we will save time if we wait——

* * *

[467] "Yesterday, Captain Svendsen, a call was made here for the production of certain records. To the best of my recollection (1) voyage records of the 'Black Gull', and (2) Passenger lists, or some record with respect to passengers on the 'Black Gull'. Have you at my request searched the offices here and produced all such records which are available? A. Yes, I have.

"Q. Now, will you tell us, one by one, just what those records are that you have brought here? A. Our system is that we have one record sheet for each port the vessel calls at.

"Q. And what do you call that record sheet? A. Yes, we call it a port record.

"Q. By whom in the regular course is that record prepared? A. It is prepared by the chief mate, and signed by him and the master.

"Q. And then, in the regular course, what is done with that sheet? A. The sheet is sent to the home office and kept here.

[468] "Q. That is the office here at Oslo? A. Yes.

"Q. And checked, and then filed away? A. That is right.

"Q. Now can, and will you produce the latest of these sheets which you have for the 'Black Gull'? A. Yes. I actually have here all of them from when the vessel actually was built, but I presume you are mostly interested from the start of the Black Diamond Line. Then I will produce all port records from January 1st, 1950, and up till July 1952.

"Q. Now, you are now handing me two folders, which contain each of them a considerable volume or number of documents. Do these two folders contain all of the records during the 'Black Gull's' charter to Black Diamond Steamship Corporation? A. No, there are still a few more here. In a third folder.

"Q. Then please give me the third folder. Now I will ask that each of these three folders please be marked as Exhibit 16(A), 16(B) and 16(C), as of this date, for identification.

"Captain, at my request, have you produced one of the printed forms, not filled in, which are used for [469] making the reports of the type that you have mentioned, shown in Exhibit 16(A), (B) and (C). A. Yes.

Mr. Pyne: Then I asked that they be marked for identification, and with the consent of the other proctors I asked the interpreter to please write in in English over, under or alongside each of the Norwegian words the English translation.

• • •

I will offer 16(D) in any event. It is a copy of the form, and as the records show, all the forms for the entire period of Black Gull's operations under that charter to Black Diamond Steamship Corporation, the final forms filled out were produced and made available to the proctors and then merely for the form—we did not introduce any of them for the reasons that I think will be obvious when your Honor sees that form.

(Marked Petitioner's Exhibit G.)

• • •

[470] Captain Svendsen was asked • • •

"In addition to the documents already marked and referred to, what other or further document or documents relating to the 'Black Gull' have you brought here today? A. I have also brought the Voyage Reports. This is a report which is filled in on board for each voyage between two ports, and sent to the office.

"Q. And they cover what vessel, and for what period of time? A. These reports cover the 'Black Gull' from the time she was built, May 1948, until July 1952."

And then I asked that the voyage reports be marked for identification as exhibits 17(A), (B), (C) and (D), and I stated: "the captain having produced three cardboard folders each with a considerable number of papers in them."

Then he was asked: "Is the printed form, not filled in, which you have presented, the same type of printed form used by Sigurd Helforsen & Co. A/S for [471] Voyage Reports, and particularly for the 'Black Gull's' voyage reports? A. Yes, it is."

And I ask that that form of the Voyage Report similarly translated by the interpreter in pencil be marked and I offer it in evidence.

(Marked Petitioner's Exhibit G.)

(The Court examines.)

Deposition of Captain Inge Svendsen
Deposition of Peter Didrick Herlofsen

Mr. Pyne: Then Captain Svendsen was asked:

"Except, Captain, for financial records concerning the 'Black Gull', have you now produced here all of the reports, logbooks or records, sent in by the masters or crews of the vessel? A. Yes, for maritime purposes, but the masters do send us a statement of their passengers.

"Q. Have you got a statement concerning the passengers? A. Well, I am sorry I have not been able to get all on the 'Black Gull', but I have a certain number of those statements, which will show you what we got from the vessels.

"Q. Will you present the latest one in date for us? A. That is on voyage 20, and that is 19."

And I asked that that document be marked as [472] an exhibit for identification. It was presented, it was marked, and I offer that also in evidence.

It shows exactly the type and kind of report concerning passengers which was sent in.

(Marked Petitioner's Exhibit I.)

• • •

Coming back, then and continuing—I believe this is a continuation of the cross-examination of Mr. Zisgen of Mr. Herlofsen, at the top of page 33:

"Q. . . . Now, did Sigurd Herlofsen & Co. or Skips A/S Jolund, furnish its masters with any written instructions? A. No. We have always found it difficult and inadvisable to tie the Captain's hands. So many things may come out that we cannot foresee in this office.

"Q. So that whatever instructions they may have had were oral instructions, is that correct? A. Yes, probably.

"Q. And I take it from what you told me a little [473] while ago, that any oral instructions they may have would

come from the heads of these separate departments you mentioned? A. Yes, probably.

"Q. Now, you know, of course that the 'Black Gull' in operating for Black Diamond Steamship Corporation under this charter, would operate in ports of Germany, Holland, Belgium and the United States? A. Yes, we did.

"Q. And you knew that each of these countries had, or might have, laws regarding the operation of the ship? A. Yes.

"Q. And you knew that each of these countries might have laws with respect to what cargo could be carried, did you not? A. Yes. That was why we could not issue any instructions here.

"Q. And you know that each of these countries had, or might have laws with respect to the manner in which certain cargo could be carried, did you not? A. Yes.

"Q. What familiarity did you or Sigurd Herlofsen & Co. have in June and July 1952 concerning any of those [474] laws, Mr. Herlofsen? A. We were not familiar with the different countries' laws to any extent.

"Q. Well, had you at that time made any effort to find out what those laws required? A. No, I do not think we had."

• • •

"Q. Mr. Herlofsen, as I get the picture, Skips A/S Johund as a corporation did not itself have anything to do with the operation of the 'Black Gull'. A. No, that was left to Sigurd Herlofsen & Co.

"Q. Sigurd Herlofsen & Co. were in fact the operators? A. Correct.

"Q. Sigurd Herlofsen & Co. in turn had no agents which it directly appointed in the vessel's ports of call? A. Not for the Black Diamond ships.

"Q. And that included the 'Black Gull'? A. Correct.

[475] "Q. And it relied on Black Diamond Steamship Corporation or Black Diamond's agents to perform what-

ever had to be performed in the various ports of call on the ship's behalf? A. That is correct.

"Q. It relied on the Black Diamond Steamship Corporation or Black Diamond's agents and the master to see that only such cargo was carried as was permitted by the charter? A. Obviously, for the simple reason if we should have anything to say with regard to the stowage of cargo we cannot very well say it here, and accept and refuse cargoes that is booked up daily, almost the last hour before sailing.

"Q. In effect, the authority of the owner of the 'Black Gull' with respect to what cargo was to be carried, and how it was to be carried or stowed, was vested in the master and in Black Diamond? A. I would say vice versa—Black Diamond and the master.

"Q. And why do you prefer to put it in that order? A. Because I think it is the Black Diamond Line or their agents who supply the stowage plan to the Captain.

"Q. And in your opinion, it is Black Diamond Steam- [476] ship Corporation which has the primary right to determine what cargo shall be accepted and what cargo shall be refused, and how the cargo accepted is stowed? A. They can determine that, always subject to the master's approval."

• • •

"Q. Do you recall any instance in which there was a dispute between the charterer and the master, which the master referred to Sigurd Herlofsen & Co. for determination? A. No, I cannot recall.

"Q. And during the whole period of the charter, you tell us Herlofsen & Co. never knew what cargo was to be carried in advance of its carriage? A. Well, you just asked me that question in a different way. You said if there was any times when the captain had to consult with us before accepting cargo, and I said not to the best of my knowledge.

"Q. And there was never the time during the period of this charter when Herlofsen & Co. ascertained after the

event that any particular cargo had been carried? A. Not to the best of my knowledge."

Now the following, your Honor, is the redirect [477] examination of the witness by myself:

"Q. Mr. Herlofsen, you told us that Sigurd Herlofsen & Co. A/S, if I recall your original answers to my questions, was either a limited company or a corporation? A. A limited company.

"Q. By that, do you mean that it is a company that issues shares of stock to stockholders? A. Correct.

"Q. In discussing Sigurd Herlofsen & Co., reference has been made to the partners of that company. Who first used the term 'partners' in connection with Sigurd Herlofsen & Co. I do not recall, but in any event I do recall that Mr. Zisgen asked you if there were four partners, to which you replied that there were three partners. Now can you or will you explain what you meant by using in connection with Sigurd Herlofsen & Co. the term 'partners'? A. I am afraid I did not make myself quite clear. When I said partner, I was referring to the directors—my father, Mr. Hvattum, and myself. I looked upon my mother not as a partner, but an ordinary shareholder.

"Q. In other words, you used the term 'partner' synonymously with the same intent and meaning as an offi- [478] cer or director? A. That is quite correct.

"Q. You were asked whether the 'Black Gull' had accommodations for a number of passengers, and you replied 'yes' in answer to Mr. Zisgen. What was the maximum total of passengers that vessel had accommodations for? A. She had accommodations for ten passengers.

"Q. In answer to my question on your direct examination, you stated that you had not received here at Sigurd Herlofsen & Co. copies of the manifests from the 'Black Gull'? A. That is correct.

Deposition of Peter Didrick Herlofsen

"Q. In so stating, what kind or type of manifest were you referring to? A. I was referring solely to cargo manifests.

"Q. And later, in connection with questions from Mr. Zisgen concerning passengers, you also referred to and used, if I recall correctly, the term 'manifest'? A. I did, and I corrected myself and said, rather passenger list.

"Q. At any event, in that connection, and when you did use the term 'manifest' in connection with passengers or questions concerning passengers, you were actually meaning passenger list or passenger memoranda of some sort? [479] A. I meant a passenger list, which we have for the sole purpose of collecting passage money from the charterers.

"Q. In connection with questions asked of you by Mr. Zisgen concerning repairs, you stated that you received reports or recommendations of some sort from the master of your or Sigurd Herlofsen's vessels, including the 'Black Gull'? A. I did.

"Q. Well, from time to time, and in the course of business, did Sigurd Herlofsen & Co. receive any other reports or surveys or recommendations with respect to repairs from any other source than the master? A. We, of course, received regular reports from the Classifications Institute, and whenever they demanded any kind of work done, that is always done immediately after the ship's arrival in port.

"Q. Reference was made to the receipt after the fire on the 'Black Gull' in July 1952 of log books or a log book, whichever it was. Do you have this log book available here? A. I think what you refer to is not log books. It was a single sheet of paper sent us after the expiration of every voyage, just showing us the time used for the [480] passage, the speed, the consumption and the course steered.

"Q. Well, apart from that single sheet or report, do you have or did you receive, to the best of your recollection, and do you have it available if you did receive it, any bound

book called or referred to as a log book of the 'Black Gull'? A. That I cannot recall, but it seemed to be the practice of every Captain when abandoning ship to bring with him the log book."

He was then asked if he looked for the log books, he did, and they were produced the following day during Captain Svendsen's examination, and they were produced here and were marked in evidence, and were marked for identification also at Oslo.

• • •

"*Re-cross-examination by Mr. Stonebridge:*

"Q. • • • Mr. Herlofsen, in your discussions or answers earlier you state, I believe, that the Captain paints, and recommends repairs, drydockings, etc. to your head office here, well in advance if that is possible? A. Correct.

[481] "Q. Do representatives from your Marine Department attend the drydockings or repairs of your vessels? A. We have followed the practice of sending down men from our Maritime and Technical Departments at certain intervals to inspect the ships. If possible, they did that simultaneously with repairs of a major kind, while an ordinary routine dry-dock and ordinary routine maintenance is left in the hands of the master and his officers."

• • •

The next deposition I would like to read, which is that of Captain Inge Svendsen.

• • •

[482] "Q. Where do you reside, Captain Svendsen? A. At Gamle Jkelsasveien 3, Grefsen, Oslo.

"Q. Do you hold any license from any Government Authority for Marine or vessel service? A. Yes. I hold a Master's license—a Norwegian Master's license.

Deposition of Captain Inge Svendsen

"Q. And for how long have you held a Norwegian Master's license? A. For ten years, since 1945.

"Q. And does that license cover all oceans and waters? A. Yes.

"Q. Prior to having a Master's license, did you have any other license or licenses, and, if so, what other, and for how long did you hold them? A. I held a Mate's license from 1929, and I also held a Wireless Operator license from 1930.

"Q. Did the Mate's license permit you to serve as Chief Officer on ocean-going Norwegian vessels on any ocean? A. Yes.

"Q. Have you had any sea service? A. Yes, I served since 1925, rather from 1925 [483] and up til my last sea duty in 1953.

"Q. When you served from 1925 at sea to 1953 was that service as an officer, or does that include sea duty prior to your becoming a licensed officer? A. That includes the duty prior to becoming a licensed officer.

"Q. And was that duty on ocean-going vessels? A. Yes.

"Q. What type of vessels were they—cargo, passenger, or what did you serve on? A. I served on dry cargo vessels for practically all the time. I did serve on tankers for about half a year or so.

"Q. If I understand you correctly, your last sea service was some time in the year 1953? A. Yes, that is correct.

"Q. And from that time down to now, what has been your occupation and service, and in whose employ? A. I have been employed at Sigurd Herlofsen & Co. in their Marine Department.

"Q. And has that been employment ashore? A. Yes, in the office here.

"Q. And here in their office at Oslo? A. Yes.

[484] "Q. Prior to that service ashore, and in the office here in Oslo, did you serve on any vessels operated or

managed by Sigurd Herlofsen & Co.? A. Yes, I served on three vessels managed by Sigurd Herlofsen.

"Q. And prior to serving on any vessel or vessels operated or managed by Sigurd Herlofsen & Co. A/S, did you serve at sea on any vessel or vessels owned or operated by other companies or owners? A. Yes, I did serve in vessels owned and operated by the Norwegian America Line for a very great length of time.

"Q. Any others? A. No.

"Q. Have you ever served on an Isbrandtsen vessel or vessels? A. I have served on a Norwegian vessel on time charter to Isbrandtsen, prior to the war.

"Q. You have previously mentioned as other companies only the Norwegian America Line? A. Yes, that is, as owner of that ship, that was the Norwegian America Line, but the ship was on time charter to Isbrandtsen.

"Q. And in what capacity were you on this [485] Isbrandtsen-Moller or Norwegian America Line vessel or vessels? A. On the ship that we chartered to Isbrandtsen-Moller I was Chief Officer.

"Q. For how long? A. For practically four years.

"Q. Your present duty or duties here in the employ of Sigurd Herlofsen & Co. A/S are what? Will you describe them for us? A. Well, at present, I am head of the Marine Department, and I have under me the Crew Department, engaging crew, and I am also naturally doing some work in connection with the survey of the vessels or maintenance of the vessels at the present time.

"Q. And when, as nearly by date, month and year as you can state it from your recollection, did you become head of the Marine Department of Sigurd Herlofsen & Co. A/S? A. January 1st, 1954.

"Q. Do you know who preceded you as head of that Department? A. Yes. Captain Wellton.

"Q. Do you know where Captain Wellton now is? A. Yes, he is here in Oslo.

[486] "Q. Is he in the employ of Sigurd Herlofsen & Co. A/S? A. No. He is retired.

"Q. When you say he is retired, will you explain further what his status is so far as the company is concerned? A. Well, he has left the employ of Sigurd Herlofsen & Co., and he is living on a pension.

"Q. Does, or does not Sigurd Herlofsen & Co. A/S have any control or say in that pension, that is, could they or could they not affect it one way or the other? A. They cannot affect it. It is State controlled.

"Q. Did you at my request communicate with Captain Wellton with respect to him coming here to testify? A. Yes, I did.

"Q. When did you do that? A. Yesterday afternoon, about six o'clock.

"Q. Will you tell us what was said, back and forth? A. Well, I told Captain Wellton that I called him on the telephone, I told him that he might be asked to come here today to answer certain questions. Then he replied that he did not feel that his health permitted him to come down here, and furthermore he stated that as I was here working in the office at [487] that time, he stated that as I was here working in the office at that time, I would probably know the same as he knew from that period.

"Q. Do you know anything yourself personally as to the condition of Captain Wellton's health? A. Well, shortly before he retired he had a serious liver operation. That was the end of 1953, and since that he has not been very strong, and he is definitely not in very good health. He is 63 years of age.

"Q. Now, in the daily work here at Sigurd Herlofsen, will you tell us whether or not the organization is divided into departments, and, if so, what departments? A. Yes, in the daily work we divide in the Maritime and Technical Department, and we also have an Accounting Department. These three are the main division of the firm.

Deposition of Captain Inge Svendsen

"Q. With respect to repairs or maintenance of vessels operated or managed by Sigurd Herlofsen & Co. A/S, do you have any duties, and have you had any duties or work to do, you personally? A. The repairs are divided. If it is strictly a technical matter it will be handled by our Technical [488] Department, but maritime matters, handling things that have to do with deck, then I have had something to do with repairs and maintenance, and also survey or inspection or whatever you want to call it.

"Q. Now, in connection with that work do you from time to time, or on occasions, visit or go aboard these vessels of that company, or operated or managed by that company? A. Yes, I do.

"Q. I will ask you whether in that connection you at any time were aboard the 'Black Gull'? A. Yes, I did.

"Q When were you last aboard that vessel? A. In November 1951.

"Q. And where was she then? A. She drydocked at Baltimore, Maryland.

"Q. At what shipyard? A. She was in Maryland Dry Dock.

"Q. And when you boarded her, was she then under repair? A. Yes, she drydocked and shifted propeller.

"Q. Did you not make at that time yourself any inspection of the vessel? A. Yes, I did inspect her. I went through very [489] thoroughly.

"Q. And did that inspection include all her hull, and appurtenances and equipment? A. Well, to the extent that you could do it during such a period, I would say yes.

"Q. And were you there when she completed whatever repair work was being done? A. Yes, I was.

Q. Will you tell us what the general nature was of that work? A. The general nature was shifting of propeller.

"Q. As a result of your inspection of that vessel, what did you find to be her condition at that time, as to hull,

appurtenances, equipment, engines, etc.? A. I found her in a very good condition.

"Q. In June and July 1952, were you then employed by Sigurd Herlofsen & Co. A/S? A. Yes.

"Q. And may I ask where at that time you were employed? A. I was in the Marine Department in the office in Oslo.

"Q. And for how long a period of time prior to June and July 1952 had you been in the Marine Department [490] at Oslo? A. I had been in the Marine Department at that time during 1951 and the first part of 1952, but I did work partly in the Marine Department for Captain Wellton also prior to that time, but I just had the work given to me by Captain Wellton. For instance, I might be sent out on a ship as a Captain, or anything that he thought he needed me for.

"Q. You just assisted Captain Wellton, in other words? A. Yes.

"Q. And having told us that you had last gone to sea in 1953, then you must have gone to sea some time after June/July 1952? A. Yes, I did. I went out as a relief Master in a tanker in 1953.

"Q. And that was your last actual sea service? A. Yes.

"Q. And then, when Captain Wellton retired, you took his position or place? A. Yes.

"Q. Now, in June and July 1952, and prior to that and during the time you were employed herein the office at Oslo, was there or was there not any system or [491] routine with respect to the engaging or hiring or appointing of Masters, Officers, both deck and engine room, and crew of the vessels operated by Sigurd Herlofsen & Co.? A. Yes.

"Q. Now, what was that routine or system? A. To take officers first, anyone applying for a job would be asked where he served prior to applying, and we keep very detailed reports for all officers, sent in every six months, and if

the man had been in our service before, well then we knew everything about him, and we could decide immediately whether to employ him or not. But if not, then we would find out where he had served, and we would call the company in which he served before.

"Q. For what purpose? A. To find out what type of a man, and of course the first thing we would do would be to find out whether he had a license for the job he applied for.

"Q. Now, does that cover both deck and engine officers? A. Yes, it does.

"Q. And how about members of the crew other than the vessel's officers, what was done in that respect [492] as to them? A. Well, the crew taken here in Norway. We do not have the same system with half-year reports for crew, but every time a man pays off we will put down on his card, we have a card system, anything that the Master has to say, whether he is a good man or whether he is no use to have, and we will look him up too and see if he is all right if we have had him before, and at least, if it is a man in some position like a bo'sun, carpenter or even an A.B., we would also in that case call the company he has served in before. But when speaking about crew, occasionally, of course, we take crew in ports outside of Norway, I mean in the ports where the vessel actually calls, and if so then of course we have to leave to the Master the decision.

"Q. Now, in connection with the Master and other officers and the crew of the 'Black Gull,' can you tell us from your own knowledge whether or not that system was followed concerning those who were aboard and manning that vessel in June/July 1952? A. Yes, for the officers definitely. For the crew there might be someone that have been signed on outside the country.

[493] "Q. Do you have and keep at the office here in Oslo in the usual course of routine, all the officers' lists, crew lists which show all the officers and crew of a par-

ticular vessel at a particular time? A. Yes, we do. We get crew lists from every one of our vessels every month.

"Q. And do you have such a crew list for the 'Black Gull' during June/July 1952? A. Well, June/July was not sent in because they were sent in the last day of the month, so I have them up to and including May 1952.

"Q. In other words, the last one that you have for the 'Black Gull' is the one that existed at the end of the month of May 1952? A. Correct.

"Q. What, insofar as you know, occurred with respect to the crew list for the end of June 1952? A. It was probably not sent us, because the May list is dated June 11th. With other words, the lists are made up a little later or rather when the month is finished, but we do make one for every month.

"Q. In any event, you do have a list for the end of May 1952, which was made up and dated insofar [494] as shown on the list, and sent to the office on the 11th June 1952. How would that list be sent to you? A. By air mail.

"Q. Now, as to the number and capacities of the officers and crews required on Sigurd Herlofsen vessels, and I might add, on any Norwegian vessels, who fixes or determines the number, and the rank or rating of the officers and crew? A. The Norwegian Sea Control gives every ship a document stating how many officers and crew every or any vessel should carry.

"Q. Was there, to your knowledge, such a certificate issued by the Norwegian Ship Control, or Sea Control, whatever its proper title may be, for the 'Black Gull'? A. Yes.

"Q. Do you know where the original of such certificates or lists are kept in the regular course of business? A. The original is kept on board the vessel.

"Q. And does Sigurd Herlofsen & Co. A/S, in the regular course of its business, keep and maintain a copy of that list here at its offices? A. Yes.

Deposition of Captain Inge Svendsen

[495] "Q. I will show you a list, or show you a paper, and ask you whether you can identify it? A. Oh, yes. Yes, I can. This is the manning statement for the 'Black Gull.'

"Q. I notice on one side of this document, one side is in Norwegian and the reverse side in English. Can you tell us whether or not the English and the Norwegian are the same statements, except of course in different languages? A. Yes, they are the same statement."

And I asked then at that time that that list be marked for identification, it was so marked and I now produce it and offer it here in evidence, your Honor.

(Marked Petitioners' Exhibit J.)

• • •

[496] "Q. I will ask you also, Captain Svendsen, please to produce the last crew list from the records and files of Sigurd Herlofsen for the 'Black Gull,' to which you have already referred? A. Yes."

It was produced and that is the one for the end of May, which the witness conceded was dated June 11, 1952. It was offered then and I will offer that in evidence now.

(Marked Petitioners' Exhibit K.)

• • •

"Q. Are you acquainted with the passenger accommodations existent on the 'Black Gull' as of the date you were last aboard of her, to which you have testified, namely, November 1951, at Baltimore, Maryland? A. Yes.

"Q. Can you tell us what the maximum number of passengers was for which there were such accommodations? A. Ten.

"Q. Will you tell us, Captain Svendsen, what the routine was with respect to Log books, both deck [497] and engine room, of the Sigurd Herlofsen vessels, as to where these Log books were and in the regular course of busi-

ness would be kept and maintained? A. All Log books will be maintained on board the vessel, unless an accident or something happens, so that it will be taken off the ship for investigating purposes.

"Q. Regardless of the date or dates or prior dates which are covered by the Log books, both deck and engine room, of the Sigurd Herlofsen vessels, and in the absence of any special reason, such as an accident or other cause for taking the Log books elsewhere, where are the books kept? A. On board the ship.

"Q. Are any of them kept and maintained here at the offices of Sigurd Herlofsen & Co.? A. No.

"Q. Do you have here at Sigurd Herlofsen's offices any Log book or Log books pertaining to the 'Black Gull'? A. Yes.

"Q. Will you produce those Log books? A. That is the smooth and rough log for the time of the accident, which was taken ashore by the Master for use during the maritime declaration.

[498] "Q. You are now producing two books? A. Yes.

"Q. Have you made a search to determine whether or not there is any other Log book or Log books relating to the 'Black Gull' here at the office of Sigurd Herlofsen & Co., or anywhere else outside the office that you know of, except these two? A. There is definitely no other Log books. The rest of the Log books went down with the ship."

Mr. Pyne: Then the two Log books which already have been marked in evidence here, your Honor, were marked for identification on the deposition.

About a third of the way down page 75:

"Q. When you were aboard the 'Black Gull' in November 1951, can you tell us whether or not there were any sign or signs concerning smoking, and if there were, what

they were and where they were, and describe them to the best of your ability?"

Mr. Zisgen: If your Honor please, I object on the ground it is immaterial, because the time as of which this question is asked is too remote.

The Court: November 1951?

Mr. Zisgen: Yes, your Honor.

The Court: I do not think it is too remote. It may affect the weight a little bit, but it is [499] certainly admissible. The objection is overruled.

Mr. Pyne: (Continuing)

"A. Well, there were signs painted on the midship house, 'No Smoking', and in the cabins we have markings for no smoking, and also for not throwing cigarette butts out of the portholes.

"Q. Insofar as concerns the 'No Smoking' signs which you say were on the midship house, can you give us any further or better description as to their location? A. I cannot say exactly where they were painted, but we usually have at least one at the entrance where we have the gangway, and one in the aft part of the midship house. I cannot remember now how the signs were placed on the 'Black Gull.'"

• • •

"Q. Now, Captain, did you at my request make any investigation as to the present whereabouts of all of the officers, both deck and engine room, who were serving on the 'Black Gull' in June and July 1952? A. Yes, I did.

"Q. Will you tell us what investigation you made, and when you made it, and what you found out as to [500] the whereabouts of those persons? A. We have a Central Register for Seamen in Norway, where we get information as to where the men are at the present time, and I have called this office, and so far as I have been able to find out

none of the officers or crew are at present in Oslo or in the vicinity of Oslo.

"Q. Throughout the time, Captain, that you have been employed by Sigurd Herlofsen & Co. A/S, whether that employment was at sea or whether it was here at their offices, have you yourself ever discussed with any officer or director of Sigurd Herlofsen & Co. or Skips A/S Jolund, or with any department head or 'boss' of either of the companies, any question or questions prior to the time of the 'Black Gull' fire, July 18; 1952, with respect to what cargoes were carried, loaded or stowed, on either the 'Black Gull' or any other vessel chartered to Black Diamond Steamship Corporation, or where on the vessel the cargoes were stowed, or how they were stowed? A. No.

"Q. Did you, throughout all of that time, ever hear yourself, or know of any such discussion between any officer, director, 'boss' or department head, [501] either of Skips A/S Jolund or Sigurd Herlofsen & Co., and any Master or officer of any vessel so chartered? A. No."

• • •

• • • some of Mr. Zisgen's cross-examination of Captain Svendsen.

• • •

"Q. Captain Svendsen, was there any cargo on board [502] the 'Black Gull' when you were aboard her at Baltimore in November 1951? A. No, she was empty.

"Q. Do I understand that you have never been aboard her when she had cargo on board? A. No, that is not correct.

"Q. When were you last on board her when she had cargo on board? A. I am not able to say, but at least I was on board her in the later part of 1949 with cargo on board.

"Q. Where was that? A. In Antwerp."

Deposition of Captain Inge Svendsen

Page 81, at the top of the page:

"Q. When you were sailing as Chief Officer and Master of vessels prior to becoming Marine Superintendent, or office employed, did you ever carry naphthalene? A. Yes.

"Q. Did you ever carry naphthalene on deck? A. Yes.

"Q. When you carried it, was it or was it not covered? A. It was in bags. No special covering.

"Q. When the bags were stowed on deck on those occasions, was the stow of bags as a whole covered, or [503] was it not? A. No, it was not covered.

"Q. And between what ports did you carry naphthalene on deck as a ship's officer? A. As Chief Officer in the Isbrandtsen-Moller service, I carried naphthalene on deck from Antwerp Rotterdam to New York and Philadelphia for approximately two years, every trip.

"Q. And what two years were those? A. 1938 and 1939.

"Q. You have told us that Captain Weilton receives a pension. Do you know from whom he receives it? A. It is a pension fund that is paid in by Sigurd Herlofsen, but controlled by the State."

Page 85;

"Q. Now, during the period from 1949 to 1952, when you were assisting Captain Wellton, did you on any occasion see naphthalene stowed on deck of a Herlofsen ship chartered to Black Diamond, uncovered? A. Yes.

"Q. On how many occasions? A. Well, as I said, I would say about eight or ten occasions at least. Well, let us say ten occasions, about.

[504] "Q. Ten occasions during that period? A. Yes.

"Q. Did you on any occasion mention that to Captain Wellton? A. No.

"Q. You kept that strictly to yourself? A. Yes, because to me it was nothing unusual. I had, as a Chief Officer, carried naphthalene on deck in just that same manner.

"Q. And you felt that it did not require any particular mention to your superior? A. Yes.

"Q. You, as Captain Wellton's assistant during that period, knew that Black Diamond was accustomed to carrying naphthalene in that fashion? A. Yes, I knew it.

"Q. During that same period, Captain Svendsen, the Sigurd Herlofsen Co. was operating other ships which were not chartered to Black Diamond, was it not? A. Yes.

"Q. You were familiar with their operations? A. Yes.

"Q. Did you, or did Captain Wellton in your hearing, ever discuss with any of the officers or [505] directors of Sigurd Herlofsen & Co. during that period what cargoes were to be carried on those other ships, not chartered to Black Diamond? A. The other ships not chartered to Black Diamond are tankers.

"Q. All of them? A. Yes.

"Q. And was that true throughout that period from 1949 to 1952? A. No, we had one Liberty ship. That was sold in 1951.

"Q. Dealing only with the Liberty ship, she was a general cargo ship, was she? A. No.

"Q. What was the nature of her cargo? A. Well, bulk cargo.

"Q. In what trade or trades was she operated? A. Most of the time in the ore trade between Narvik and Antwerp.

"Q. Always carrying the same kind of cargo? A. Yes, always ore and nothing else.

"Q. Was anything carried back from Antwerp to Narvik? A. Nothing."

• • •

[506] Mr. Zisgen: Your Honor, I should like to read a few questions and answer dealing with Cap-

tain Svenson's position in the Herlofsen organization.

The Court: Is this in the cross-examination?

Mr. Zisgen: It is, sir.

• • •

"Q. When did you first commence office work under Captain Wellton? A. The first time I had anything to do in the office was for a very short period in 1947.

"Q. When next did you have anything to do with the office side of the work? A. I were in the office part of 1948, also part of 1949, two months of 1950, most of 1951, and then up until 1952. I was the whole year in the office in 1952 and part of 1953.

'Q. Now, when you first came to the office in 1947, what was the nature of your work? A. I only assisted Captain Wellton in making up some average claims.

"Q. General average claims? A. No, particular average claims, statements of [507] claims.

"Q. That is, particular average to the vessels? A. Yes.

"Q. Then when you next came to the office to do office work, which was in 1948, what work did you do? A. Only such work Captain Wellton asked me to do. Actually nothing particular, only what he needed me to assist him on.

"Q. Well, would it be fair to say that during that period in 1948 you assisted him generally in the various duties which he performed as your predecessor? A. Yes, I assisted him in certain of his duties. Yes.

"Q. Now, coming to the next occasion, which was in 1949, what did you do? A. It was the same as in 1948.

"Q. And in 1950? A. The same thing.

"Q. And in 1951? A. The same thing.

"Q. And in 1952? A. Same thing."

• • •

[508] "Q. And it was January 1st, 1953, that you succeeded him? A. No, 1954."

• • •

Deposition of Albert Zimmermann

"Q. Mr. Zimmermann, what is your occupation? A. A surveyor of the Norwegian Veritas.

"Q. How long have you been employed by Norwegian Veritas? A. From 1919.

"Q. During the time you have been with Norwegian Veritas, will you briefly outline for us over the years the nature of the work there that you have done? A. From the beginning I was at the main office. Later I have been employed out of Norway, at the shipyards and on board vessels, both during construction and during periodical surveys.

"Q. What is your present work or position with Norwegian Veritas? A. At present I go through and examine reports at the main office.

"Q. What kind or type of reports? A. Mostly periodical surveys and partial surveys consequent upon average damage.

[509] "Q. What is the nature or type of business which Norwegian Veritas does or performs? A. The purpose of the Norwegian Veritas is to produce a reliable and uniform classification of vessels, to work for safety at sea, and to further rational maritime underwriting.

"Q. Is any of the work done by Norwegian Veritas performed or done in connection with or under the authority of the Norwegian Government, or any branch of the Norwegian Government? A. In connection with the office of maritime matters under the government, the Norwegian Veritas has undertaken to carry out certain surveys on behalf of the Norwegian Government maritime authorities.

"Q. In the work and routine which you have mentioned of Norwegian Veritas with respect to classification of vessels, does Norwegian Veritas have different classifications? A. Yes.

"Q. What is the highest class, or how do you designate the highest class? A. Star 1A1.

Deposition of Albert Zimmermann

"Q. Did you personally at any time ever go aboard the Norwegian Flag Vessel known and called the 'Black [510] Gull', previously known and called the 'Herborg'? A. No.

"Q. Did you, at the request of Sigurd Herlofsen & Co. A/S, or its attorney, Alex. Rein, of Oslo, gather together and bring with you here today all records of Norske Veritas concerning that vessel? A. Yes.

"Q. Will you tell us whether or not those records were made in the regular course of business of Norwegian Veritas? A. Yes.

"Q. Were those records made at the times and of the dates, or within a reasonable time after the dates indicated on each and all of those various records? A. Yes.

"Q. On what basis or from what data or knowledge of your own can and do you make suc. statement? A. On the basis of such reports that existed.

"Q. Are you and were you at the times indicated in these reports, familiar with the regular course of business and routine of Norwegian Veritas in connection with the making receipt and filing in Norwegian Veritas' office here in Oslo, the documents in question? [511] A. Yes.

"Q. Was it the duty of the persons who made these reports and records to make these reports and records at the times in question and on or about the dates shown on them? A. Yes.

"Q. From these records will you tell us whether or not the motor vessel 'Black Gull' was classified by Norwegian Veritas? A. Yes.

"Q. Was that vessel classed by Norwegian Veritas? A. Yes.

"Q. When was she first classed? A. May, 1948.

"Q. What was her class? A. Star 1A1.

"Q. Is that the class which you have already mentioned as being the highest class? A. Yes.

Deposition of Albert Zimmermann

"Q. At any time, down to and including the 18th day of July, 1952, was there any change or alteration in that class? A. No.

"Q. Did the 'Black Gull' remain classed in the [512] class you have stated up to and including July 18, 1952? A. Yes.

"Q. Do the inspections, surveys and class records made by Norwegian Veritas include or cover the entire vessel, hull, engines, equipment and all gear and appurtenances? A. Yes.

"Q. Can you tell us from the records you have brought here, the time and place of the first survey or surveys and inspection or inspections for the purpose of original classing of the 'Black Gull,' formerly 'Herborg'? A. Yes.

"Q. What was the date and place of that or those inspections or surveys? A. Do you refer to the first survey after the completion of the vessel?

"Q. No, the first survey for classification purposes, whether it was one or more than one, for her original classification. A. That would refer to the building superintendant's survey.

"Q. During the course of the construction of the [513] vessel, do your records indicate that the construction was supervised or that Norwegian Veritas surveyors or representatives were present during construction and at the time of completion? A. Yes.

"Q. And were they present, the Norwegian Veritas surveyors and inspectors during that period? A. Yes.

"Q. Do your records, or the Norske Veritas records, show whether or not after those inspections or surveys for original classification, the 'Black Gull' ex-'Herborg' was thereafter inspected or surveyed by Norwegian Veritas surveyors? A. Yes.

"Q. Did you, at the request of Skips A/S Jolund, prepare from the Norske Veritas records, and from the records which are here present today, a summary statement show-

ing the dates and places of surveys and inspections of the 'Black Gull' ex-'Herborg' and of all of them? A. Yes.

"Q. I show you three typewritten sheets of paper in the form of a letter bearing the date 11th July 1955, and I will ask you to state whether or not that [514] paper is the summary statement mentioned? A. It is the same document.

"Q. Is it a true and correct summary statement of the contents of the records of Norweigan Veritas concerning the vessel in question? A. Yes."

I then offered the document in evidence, your Honor. It was marked, and I now repeat the offer here and offer it in evidence as an exhibit on behalf of the petitioner. It is partially in English, your Honor, and partially in other languages, but I think the portions that are not in other languages are clear. But in any event, we will have them, if need be, translated. It shows the date and place of each inspection and survey, and apparently those that were made outside of Norway are reported in some instances at least in the language of the country where the inspection was made and report made.

(Marked Petitioners' Exhibit L.)

"Q. In the regular course of business of Norwegian Veritas, do the inspections or surveys, either periodical or partial—for you have already mentioned, I believe, periodical and partial surveys—[515] result in recommendations or requirements by Norwegian Veritas of work to be done or performed, repair work or other work on classed vessels? A. Yes.

"Q. And do the recommendations or requirements for such work usually and ordinarily have a time scheduled or fixed within which the work should be done? A. Yes.

"Q. Do the records which you have produced here concerning the 'Black Gull' show whether or not there was any such work or requirements or recommendation for work or

requirement by Norwegian Veritas surveyors, which was not done or performed within the specified or required time limit? A. There were some recommendations, but they were granted a postponement in connection with the postponement of the periodical survey.

"Q. What were those recommendations? A. Shall I read it out in English? Two indented areas in tank top in No. 2 hold, port side, and one on starboard side near center line, and forward end of No. 2 hatch between frames Nos. 135 to 140, each 6 feet x 6 feet, to be dealt with at first opportunity and internals repaired as found necessary (29/11-50). [516] Deck plating starboard side at No. 2 hold in way of repaired side plating should be examined by Veritas and dealt with at next opportunity (8/2-51)."

They use the European system of the date first, your Honor, and month next.

(Continuing reading:)

"Permanent repairs to be carried out at owner's convenience of fo'c'sle deck, deck beams and girders, deck beam No. 10 and plating in shelter deck, bulkhead in control room under windlass, repair of front bulkhead in masthouse, and crack at aft starboard corner No. 3 hatch to be welded. (3/7-1951)."

Continuing with his answer:

"At first opportunity, shaft alley to be repaired where damaged, from frames No. 54 to 65. (2/10-1951)."

Down at the bottom of the page:

"Q. Mr. Zimmermann, would you tell us whether or not, according to the Norwegian Veritas records you have produced here, there were in existence as of July 18th, 1952, any violations of recommendations or requests of Norwegian Veritas with respect to the 'Black Gull'? A. Violations—I do not quite gather what [517] that stands for.

"Q. Well, there is a Norwegian word, presumably, which should and can be translated as a violation. I will ask the question, however, this way. Insofar as the Norwegian Veritas records show, did the vessel owner or its manager, that is Skips A/S Jolund or Sigurd Herlofsen & Co. A/S violate any rule, regulation or recommendation made by Norwegian Veritas with respect to the 'Black Gull' by not performing within the specified time, that is, within the time allowed by Norwegian Veritas, any work recommended or required. A. No."

• • •

Mr. Zisgen: Just one question, which was the only one on cross-examination:

"Q. Mr. Zimmermann, in surveying and classifying vessels Norwegian Veritas does not purport to deal with the stowage of cargo, does it? A. No."

• • •

Professor Sjur Braekhus, page 51:

"Q. Professor Braekhus, where do you reside? A. I reside in Baerum, near Oslo.

"Q. What is your occupation? [518] A. I am Professor of Law at the University, Oslo.

"Q. Is that position as Professor of Law in any way connected with the Norwegian Government or Civil Service? A. Yes. Oslo University is a State University and the professors are civil servants.

"Q. How long, Professor, have you been in that occupation as Law Professor? A. I was made a Professor of Law in January 1948—about 7½ years.

"Q. What, please, has been your education and and background, particularly with respect to legal matters? A. I studied for five years at the Faculty of Law, University

of Oslo, passed the ordinary State Examination, and then I acted as Assistant Judge in a legal court for a year. After that, I gave lectures on Maritime Law at the University. After the War I was made Research Fellow of the University in 1945 and took my Doctor's degree in 1947. I should perhaps add that the degree of Doctor of Law is not, as on the Continent, an ordinary part of the education. In Norway for the moment there are fifteen Doctors of Law, all told. Then I was made Lecturer of Law in 1947, and Professor in 1948.

[519] "Q. Apart from the degrees which you have already mentioned, have you any diploma or degree of any other type or kind? A. No. I have acted as a Judge of the Court of Appeals of Oslo on several occasions in one and a half years.

"Q. In your present occupation, and since and during the time that you have been Instructor and Professor at the University, will you describe for us, please, the nature of the work that you have done, what your duties have been? A. My duties as a professor is in the first place to give lectures and take part in the examinations of the students and then to do legal research work and besides my official duties I have done quite a lot of legal work of a private nature. I have been giving opinions for lawyers, and have been acting as an Arbitration Judge, especially in maritime matters.

"Q. When you say you have done legal work of a private nature, will you explain that a little more fully for us? A. I have been asked by members of the Oslo Bar to give opinion on legal questions—opinion which they have used in litigation in Norwegian [520] Courts and elsewhere.

"Q. Do I understand you to say you have appeared before the Norwegian Courts to testify or give opinions on legal matters? A. I have not appeared personally before the Courts, but the opinions which I have written have been produced before the Courts.

Deposition of Professor Sjur Braekhus

"Q. Have you, throughout your legal career, specialized in any particular branch or branches of law? A. Yes, I have specialized in two branches, first Maritime Law, and then the Law of Bankruptcy.

"Q. In addition to the teaching of private law, or other work you have mentioned, do you do any other work, especially or particularly in connection with any publication or publications? A. Yes. I am editor of a journal of maritime law called 'Arkiv for Sjorett' published by the Norwegian Maritime Law Association, which is a branch of the Comite Maritime Internationale.

"Q. And for how long a period of time have you been such an editor? A. The publication started in 1951 and I have been the editor from its beginning.

"Q. Have you written, or are you the author of any books or treatises? A. Yes, I have written a book on Law of Brokers. That was my Doctor thesis in 1947, and then I have written some smaller books on Maritime Law matters. Are you interested in the titles?

"Q. I would like to have them. A. I give the titles in English, but they were written in Norwegian:

"Ice Hindrances in Voyage Chartering, "Vicarious Liability of Ship Owners, then a number of small articles in law periodicals, mostly about limitations of liability, and shipowners' legal limitation.

"Q. Are you a member of any legal association, sir, or societies apart from Comite Internationale that you mentioned? A. Yes, I am in fact vice-president of the Norwegian Maritime Law Society, which is a branch of the Comite Maritime, and I have been representing Norway on the different international meetings of the Comite Maritime, and the International Maritime and Diplomatic Law Conference in Brussels in 1952.

"Q. Have you, Professor, made any research or investigation at the request of Mr. Alexander Rein, [522] of Oslo, or of myself, into the question as to whether or not there

is now, and whether or not there was in June/July 1952, any Norwegian law, statute or other law, or any rule or regulation or requirements of any Norwegian Government authority or Government Department which involved or concerned the loading on board vessels or the stowage on board vessels or the transportation on board vessels of napthalene? A. Yes, I have.

[523] "Q. Will you tell us whether or not, now or at the times stated in June/July 1952, or prior to June/July 1952, there was any such law, rule, regulation or requirement? A. Yes, I can state positively that there is not now, and there was not in July 1952, or prior thereto, any such law or decision.

"Q. I will ask you whether you made any similar research or investigation as to whether there was any such law, rule or regulation at the times in question which mentioned or referred to a chemical product known or called vinyl cyanide, also known or called acrylonitrile. A. Yes, I made the same sort or research.

"Q. Was there at the times stated any such law, rule or regulation which mentioned or referred to that chemical product? A. There were not any special rules concerning that product, but as vinyl cyanide is an inflammable substance, the general rules concerning inflammable substances will apply."

• • •

[524] "A. Section 19."

The witness here is referring, as shown by the preceding matter, to the Norwegian Statute of 1903, the 9th of June. The witness answers and reads Section 19—on page 55, a little below the middle of the page:

"A. Section 19. Highly inflammable substances may be carried as deck cargo when contained in vats or cans as mentioned in Section 15. They must be placed at a safe distance from any companionway, or other opening in the deck, cabins or engine-room, and must be properly stowed, and securely lashed.

Deposition of Professor Sjur Brackhus

"Smoking is prohibited in the neighborhood of the places where such substances are stowed. When loading or unloading such substances care must be taken that no danger can be caused by fire or sparks from engine, funnel, lights, etc.

"During conveyance in Norway, drums, barrels, cans, and boxes, must be painted on the outside in a glaring red colour, and in a conspicuous place, [525] be marked 'Inflammable' painted in white letters at least 5 cm. in length.

"It is advisable to furnish the openings of all receptacles with a safety net provided with a fusible plug, or the like.

"First Section 2, then Section 19, and then Section 15 of the regulations. In Section 19 there is a reference to Section 15. Section 15 describes"——

That has all been read from there on.

* * *

"Q. Have you now, Professor, covered all of the Rules, Regulations or Laws which either could or might pertain to the matters concerning which I have enquired of you? A. Yes.

"Q. Can you tell us, Professor, whether or not under Norwegian Law, Rules or Regulations of any Government Department or subdivision, there is any requirement or specification or definition concerning a cargo or a passenger vessel insofar as the number of passengers permitted to be carried is concerned? Is there any such law? A. Yes, there is a definition of a passenger [526] vessel in the Statute which I mentioned.

"Q. Will you first identify the Statute, and then give us the definition? A. The Statute is an Act governing the public supervision of the seaworthiness of vessels of June 1903, and there is Section 94, the first three paragraphs. I have the Norwegian text here, and I will prepare the translation.

"Q. Will you just give us the translation as your answer? A. Section 94: Norwegian Steamship (i.e. all

vessels propelled by engine power) which carry passengers, shall, in trades determined by the King or anyone authorized by him, be subject to survey and inspection in accordance with the regulations established in this chapter.

"Steamvessels carrying a smaller number of passengers than one adult per 25 gross register tons, shall be exempted. This exemption does not apply, however, if a steamer of any size carries more than 12 passengers.

"Q. Will you tell us whether or not there was in force and effect on July 18th, 1952, and prior thereto, any Norwegian law which provided for [527] payment of compensation or damages to officers or members of the crew of Norwegian flag vessels for personal injuries sustained by them, or to their next of kin or relatives in the event of their death? A. Yes, there is and there was an Act of 24th June 1931 respecting accident insurance for seamen.

"Q. And that Act was in force and remained in force down to and including July 1952? A. Yes.

"Q. And may I ask, is it still in force to the present time? A. It is still in force.

"Q. When you say 'Act' and use the word 'Act,' will you tell me precisely what you mean by 'Act'? A. It is an Act passed by the Norwegian Parliament.

"Q. Will you tell us whether or not the compensation payment or damages provided for under such law were exclusive, that is to say, were the officers and crew or their next of kin or relatives, in the event that they were killed, limited to the payments of compensation or damages provided in that law? A. I think I could answer that question by reference to Section 28 of that Act, which I have here in translation.

[528] "Section 28: (1) Accidents covered by this Act shall not entail any liability on the shipowner, the master or any other person in command on board to pay any compensation personally or from the property of the vessel (vessel and cargo), unless it is proved by a criminal convic-

tion that the person in question has caused the injury purposely or through gross negligence.

"The right to compensation as herein specified may be enforced even without the settlement of the case by a criminal conviction if non-conviction is due to the death of the offender, his absence or some other reason dependent upon him.

"The above provisions shall not affect the liability of the shipowner under the Seamen's Act to pay wages, board and lodging and funeral expenses in the event of an accident to a member of the crew.

"(2) The owner, or the person in command of the vessel, shall not be liable for any compensation payable by a subordinate in respect of an accident covered by this Act.

"(3) The liability of a third party, not covered by the Seamen's insurance scheme for accidents embraced by this Act, shall not be affected by its [529] provisions (but see subsection 4).

"(4) Even if the shipowner, or another person, is liable for an accident covered by this Act, the injured person or his surviving dependents shall in all cases receive from the National Insurance Institution the compensation prescribed in Sections 6-11.

"The compensation which the injured person or his surviving dependents may claim from a third party in pursuance of the rules laid down above in this section shall be stipulated, in conformity with the general provisions of the Act, in the form of a lump sum. The claim of the person entitled to compensation shall be transferred to the National Insurance Institution and the insurance fund concerned so long as the injury entails expense and liability upon them (cf. section 73 of the Health Insurance Act). This shall not apply to a claim for compensation for loss of property. If the full amount of compensation cannot be obtained, the amount due to the person injured or his surviving dependents shall be paid to them before the

claims of the National Insurance Institution and the insurance funds are met.

[530] "Q. Professor, could a Norwegian national or citizen, under the Act of Parliament to which you refer, lawfully or properly bring a suit or make a claim anywhere, not only in Norway, but elsewhere, and particularly in the United States, against a Norwegian flag vessel on which he was serving, or against the owner or operator of that vessel, to recover damages for personal injuries sustained or alleged to have been sustained on board or in the service of the vessel? A. A Norwegian seaman could, of course, bring a suit for a Norwegian court, but the owner would be exonerated, with one exception, that it is proved by criminal conviction that he has caused the injury wilfully or through gross negligence.

"Q. Only in the event of wilful injury by the owner or the gross negligence of the owner? A. Yes. Perhaps I should add that a Norwegian seaman should not bring a suit before a foreign court. That would be against the Seaman's Act.

"Q. With respect to the next of kin or relatives of a deceased seaman, what is the Norwegian law in that respect?"

And at Mr. Zisgen's suggestion it was added [531] "Does counsel mean relatives of Norwegian seamen?"

"Q. That is right—relatives and next of kin of Norwegian seamen? A. The relatives of a deceased seaman would claim no compensation unless the owner has been guilty of gross negligence, or has caused the damage wilfully. The same rules as for a claim made by the seaman personally."

* * *

Mr. Stonebridge asked:

"Q. * * * With respect to questions and/or answers concerning the Compensation Act of Norway, does it or does it not apply only to Norwegian citizens? A. It applies only to Norwegian citizens. There is Section 2, subsection

Deposition of Professor Sjur Braekhus

1: 'Aliens shall not be liable to insurance, nevertheless the Crown may conclude reciprocal agreements with other countries respecting compensation to seamen and their dependents.'

"Q. As between Norway and Belgium, has the Crown concluded any such agreement? A. No, it has not."

• • •

[532] Mr. Zisgen: Thi is part of my cross-examination, your Honor,

• • •

"Q. Dr. Braekhus, I understand then that no compensation under the Acts you have mentioned is payable to the surviving relatives of a Belgian seaman whose death occurs on a Norwegian ship? A. That is correct, with one exception. In subsection 2 of the Act, there is special rules covering hospital treatment and funeral expenses.

"Q. With that exception my statement was correct? And am I correct, therefore, in assuming that the dependent relatives of a deceased Belgian seaman on a Norwegian vessel are not prohibited from suing, either in Norway or abroad? A. They are not prohibited from suing in Norway, and I should think you are correct that they are not prohibited from suing abroad.

"Q. That last would depend somewhat on the law of the forum, would it not? A. Of course."

I think, your Honor, I summarized the only other part of Dr. Braekhus' cross-examination that I wanted to, but for safety's sake I will simply say that he testified that Norway was a party to the [533] International Convention relating to bills of lading, known as The Hague Rules, and a party to the International Convention for the Safety of Life at Sea 1929, and sometime after July 1952 became a party to the International Convention for the Safety of Life at Sea 1948.

• • •

[534] By Mr. Zisgen.

"Q. Norway is a party to the International Convention relating to rules for Bills of Lading, known as the Hague rules, is it not? A. Yes.

"Q. And it is also a party to the International Convention for the safety of life at sea, signed in London in 1929? A. Yes.

"Q. And that was true as to both Conventions in June and July 1952? A. Yes.

"Q. It is also now a party to the International Convention for the safety of life at sea signed at London in 1948, is it not? A. Yes.

"Q. But that Convention did not become effective [535] as to Norway until sometime subsequent to July 1952? A. That is right."

• • •

"Q. The definitions which you gave us a while ago relating to highly inflammable substances—is there any definition in the regulations or statutes of Norway of 'inflammable' as distinct from 'highly inflammable'? A. I do not think so. I would not answer for certain. I have not made any special research on that point.

"Q. Even if there is no definition in the Norwegian statutes or regulations of 'inflammable' as distinct from 'highly inflammable,' do the regulations contain any particular provisions as to the loading or stowage of inflammable substances, again as distinct from highly inflammable? A. Not in the capacity of being inflammable.

"Q. Then do I understand, Doctor, that excepting for goods defined in the regulations as highly [536] inflammable, the Norwegian law contains no stipulations as to the loading and stowage of ordinary inflammable goods? A. No general rules based on the capacity of being inflammable, but of course there are special rules concerning different sorts of cargo which are inflammable, but there is no

general rules concerning inflammable as distinct from highly flammable.

"Q. Can you tell us some of the literature, as you call it, to which the Norwegian Courts have been accustomed to refer to determine what is or is not proper stowage for goods not mentioned by name in the regulations? A. Well, I am afraid I cannot give you the titles. I have seen several of these books, but do not use them daily myself.

"Q. You do not know? A. Well, I have used several of the books myself, but I do not remember the titles. I remember one Norwegian one.

"Q. What was the name of that? A. Schramm, I think. I am not quite certain, but I can check it up if you like."

• • •

[537] Deposition of a lawyer named Joseph Collard:

• • •

"Q. Mr. Collard, do you reside here in Antwerp? A. I reside in Antwerp.

"Q. What is your occupation? A. I am a lawyer in Antwerp as from 1929.

"Q. Will you tell us what you legal education has been and what college or university degree or degrees you hold, if any? A. I have done all my legal study without following the course of the University. I have passed all my examinations at the Central Jury who delivered me my certificate of Doctor-in-Law.

"Q. When did you receive your certificate as Doctor of Law? A. I have received my certificate of Doctor-in-Law in August 1929.

"Q. Did you at any time attempt or take any course or courses at any navigation school and if so what school and when? A. I have followed the course of the navigation school of the State in Antwerp in 1922 or 1923, if I [538] remember well.

Deposition of Joseph Collard

"Q. Did you receive any diploma or certificate from that school or course? A. After having passed the examination I received the certificate of cadet deck officer in the ocean trade.

"Q. When did you receive that certificate? A. At the end of the 1922 or 1923 term.

"Q. What is the date of your birth? A. The 3rd June 1904.

"Q. Are you a member of the Bar and admitted to practice in court or courts in Belgium and, if so, what court or courts? A. I am a member of the Bar at Antwerp as of October 1929. In this quality I may plead before all the Tribunals of Belgium and before the three courts of Appeal but not before the Court of Cassation.

"Q. Have you since you have been admitted to these courts been in active practice as an attorney or barrister before them? A. I have practiced without interruption and in a very active way as from October 1929.

"Q. Have you during your practice had any specialty of particular kind or type of law which you [539] have dealt with? A. I have specialized in maritime cases and also interior waterways as well as in commercial cases as from my entry in October 1929.

"Q. Have you engaged in any teaching of law and if so what law have you taught and when and where? A. I am Professor at the School of Navigation of the State in Antwerp where I give courses in some kinds of law especially maritime law. I think as from 1943.

"I am also Professor at the Higher Commercial Institute St. Ignace where I give a course in Maritime Law and also Maritime Insurance since 1943/1944.

"Q. Are you a member of any association or society or an officer or director of any association or society which concerns maritime or marine matters, and if so what association or society and in what way are you connected with them? A. I am naturally member of the Belgian Associa-

tion of Maritime Law. I am also member of the Committee which has been appointed with elaborating the maritime law for the Belgian Congo. It is an official committee, instituted by the Ministry of the Overseas Territories.

"I am President of the paritary commission [540] of the Merchant Marine in Belgium.

"Mr. Zisgen: President of what?

A. Paritary Commission that is 'Commission Paritarie.'

"Mr. Zisgen: What does that mean?

A. Let me explain, sir. We have here in Belgium a delegation of Shipowners and ship's crews. The Chairman of this commission I am. This commission is in charge of discussing all matters of maritime labor.

I am president of the mixed committee of commercial terms which has been instituted by the Federal Maritime Commission of Antwerp and by the Chamber of Commerce in Antwerp.

"Q. Will you, Mr. Collard, name for us a few clients for whom you handle or have handled maritime legal matters? A. My main clients are Protecting Clubs or Underwriters.

"Q. When you say Protecting Clubs you mean what is generally referred to as Protection and Indemnity Clubs? A. Yes.

"Q. And when you mention insurance companies are [541] you referring to marine insurance companies? A. Yes, mainly.

"Q. Now, did you, at my suggestion or the suggestion of my client, who is represented by Oslo lawyer Mr. Rein, make any research or investigation into the question as to whether or not there is now and whether or not there was on July 18th, 1952, and prior thereto any Belgian law, rule, regulation or requirement of any Belgian Government authority or department which mentioned or concerned the

stowage or transportation of naphthalene? A. I have been asked to make that research and I have done it.

"Q. Did your investigation and research include any Court decision or decisions referring to or mentioning naphthalene? A. Yes, they have asked me to look for any decision on the subject and I have done it.

"Q. Now, are there now or has there in the past been and particularly was there in July 1952 any such law, rule, regulation, statute or court decision? A. There is not at the moment and there was not in July 1952 any law, statute, regulation regarding the stowage of naphthalene. I have not [542] found any decision or judgment which deals with the stowage of naphthalene.

"Q. Mr. Collard, have you also made enquiry or research at my suggestion recently with respect to the question as to whether or not there are any court decisions involving the interpretation or application of Article 66 of book 2 of the Belgian Commercial Code? A. Yes, they asked me and I have done that investigation.

"Q. Can and will you refer, please, by name, identification, citation of the book, where it is to be found, any court or court's decision with respect to Article 66 of book 2? A. Yes, I started by rereading Article 66 of the Commercial Code and then I have read the comment which Messrs. Smeesters and Winkelmolen have given on Article 66. Smeesters and Winkelmolen are the commentators best known on maritime law in Belgium.

"Q. Can you refer to any specific case or court decision involving that matter or that question? A. Smeesters and Winkelmolen cite several decisions in their work, and I have reread these judgments and I have also searched whether there [543] were not any others.

"Q. I would like to know, not necessarily all of them, but at least one or two decisions, especially some decisions of the Appeal Court at Brussels involving that question. A. There is especially a decision of the Court of Appeal of Brussels in 1923, if I am not mistaken.

Deposition of Joseph Collard

"Q. Can and will you cite that decision by name, volume and page? A. I cannot quote it by heart but it must have appeared in the Jurisprudence of Antwerp and I see that it has appeared in the Jurisprudence of the Board of Antwerp of 1923, page 443 and following.

"Q. And the name of the case? A. Case Dekkers v. Landaur and Co. and Ullivari. I should like to complete my answer.

"Q. Yes, sure. A. The research that I have done on Article 66 has confirmed the Belgian Tribunals and Courts admit that the authority to load cargo on decks sufficiently results from the acceptance without any reservation by the shippers of bills of lading showing that the goods have been loaded on deck.

"Q. Does the case to which you have referred [544] in 1923 so decide or so hold? A. The rest of the Court of Appeal of Brussels of 1923 decides in that sense.

"Q. Is that 1923 decision an appeal from a lower court, and, if so, will you give us the citation and volume of that lower court decision? A. This arrest judgment by the Antwerp Tribunal of Commerce of 1922.

"Q. Will you identfy for us the volume and page of the 1922 decision you mention? A. This decision has been given on the 4th March 1922 and appears in the Jurisprudence of 1922 page 180 and following.

"Q. In your opinion what is the law of Belgium on a question as to whether or not the provisions of Article 66, Book 2, of the Commercial Code with respect to written consent of the shipper are applicable if a bill of lading is issued to the shipper which bill of lading specifies or provides for on deck stowage? A. When keeping ourselves to the literal wording of Article 66 one might believe that a written consent from the shipper is always required but the comments by Smeesters and Winkelmolen and all the judicial [545] decisions to which I have referred show that one cannot limit oneself to this literal interpretation

and that the acceptance of a bill of lading mentioned the loading on deck is a written consent provided by Article 66."

• • •

[546] • • • Mr. Zisgen's cross-examination.

• • •

Mr. Zisgen: I think I can perhaps summarize this—I do not think there is too much argument about it.

Maitre Collard agreed that Belgium is a party to The Hague Rules Convention; that it has a legal statute similar in terms to The Hague Rules, which is no Article 91 of its Maritime Code; that both of those, that is, the Convention and the Statute impose on the carrier a duty to load and stow the goods appropriately, and by "appropriately" he means properly and carefully and reasonably; that there is no provision in either the Convention or the Statute which excepts napthalene from that obligation.

He further agreed that the parties might lawfully, under the law of Belgium, contract to have The Hague Rules applied to their contract of [546] carriage even in instances where The Hague Rules did not apply of their own force.

He agreed that when a carrier accepted good for transportation on deck he was still obligated to carefully load and stow them but he continued that he was entitled to exempt himself from that obligation by contract.

• • •

Both the rules annexed to The Hague Rules Convention and Article 91 of the Belgian Code of Maritime Law"—[548] if you will start there.

Mr. Zisgen: Both of those "imposed upon an ocean carrier the obligation to properly load and stow the goods offered to him for transportation, do they not?

"A. Indeed, the Belgian law as well as The Hague Rules impose on the carrier to load and stow the goods appropriately.

"Q. And by appropriately you mean properly and carefully, do you not? A. It is a question of appreciation of the facts that in every case the carrier must load and stow carefully and reasonably the goods which have been entrusted to him.

"Q. There is no provision either in The Hague Rules or in Article 91 which excepts naphthalene from that obligation, is there? A. Neither the Hague Rules nor the Belgian Article 91 in particular deal with the carriage of naphthalene or any other goods, but the Belgian law provides that its provisions do not apply to the carriage of goods on deck nor to livestock.

"Q. By that you mean, Maitre Collard, that neither the Rules nor Article 91 specifically mention naphthalene, do you not? [549] A. Yes.

"Q. It is true, is it not, that their general requirements of proper loading and stowage apply as much to naphthalene as to any other goods? A. The carrier must bestow the care on the goods as well on naphthalene as on other goods for loading and stowage.

"Q. Now, do you not also agree that under the laws of Belgium the parties to the contract of carriage may agree that The Hague Rules or any part of The Hague Rules may govern the transportation of their gopds even in instances where The Hague Rules do not apply of their own force? A. Under the Belgian law parties may agree that The Hague Rules, as well as the Article 91, will apply even there where they do not apply as statuted.

"Q. Do you not also agree that under the Belgian law in force in July 1952 an ocean carrier has certain obligations with respect to cargo which is carried on deck with the consent of the shipper? A. When an ocean carrier accepts to transport goods on deck he must naturally care-

fully load and stow the goods but he may exempt himself from liability as per eventual clauses in the bill of lading.

[550] "Q. Is it your understanding of the Belgian law that by a provision in the bill of lading an ocean carrier in July 1952 could completely exempt himself from all responsibility for damage to the goods even if the damage was caused by negligence on the carrier's part? A. To answer this question I must give my opinion on the exemption clauses according to Belgian law.

"Q. That is what I asked. A. The Belgian jurisprudence and doctrine generally admit the exemption clauses of a contract but they often refuse to admit these exemption clauses when the fault that has been made is gross or inexcusable.

"In that case we discuss the question whether one may exempt himself from the gross fault of a subordinate. One can never exempt himself from his own gross and inexcusable fault and one discusses the matter as to whether one may exempt oneself from the gross and inexcusable fault of one's subordinate.

"Q. When you say one discusses that matter you mean that is a point at issue in the Court? A. There are decisions to the opposite of that point.

"Q. In other words, the law of Belgium is not [551] yet completely settled whether or not one may excuse himself in the situation have put for fault of subordinates other than personal faults, is that correct? A. I would prefer to say that the Belgian Jurisprudence and Doctrine are not yet settled, because the law does not treat this matter specifically.

"Q. When you say the law does not treat this matter specifically you mean the statute law, do you not? A. A law made up by a tax which has been agreed upon by legislation or by the Code Napoleon.

"Q. You understood, did you not, Maitre Collard, that when I said the law is not settled I meant not merely a

statute but the whole body of law from whatever source derived? A. In French we say 'en droit Belge'. In Belgian right.

"Q. The answer to my question is yes, is it not? A. Yes.

"Q. Then, as I understand you, Maitre Collard, there may be instances in which a carrier who stows goods on deck with the consent of the shipper may be liable for damage to them and those instances are instances in which he is guilty of gross negligence? [552] A. In principle, the carrier is responsible for the goods loaded on deck. He may exempt himself from liability when he may occasionally be relieved from liability. He can so be held responsible if he has committed a gross personal fault or negligence or even a gross fault or negligence committed by his subordinate if the Tribunal agrees that he is to be held responsible for this fault of his subordinate."

• • •

[553] Continuing the cross-examination by Mr. Zisgen:

"Q. Now you told us that you did not know of any statutes, rules or regulations, dealing with the loading or stowing of naphthalene by name, did you not? A. Yes, I told you that there is none.

"Q. Then in determining whether or not there is gross negligence in the carriage on deck with the consent of the shipper of naphthalene or other goods not mentioned by name in any statute or regulation, from what source do the Belgian courts derive their standards for judging whether due care has been exercised? A. It will in each case be a separate case adjudicated by the Court and the Court will rely itself on the surveyors. The Court will rely for each case on its own merits on the information it has received and generally on the basis of the surveyors' reports.

"Q. Who are these surveyors whom you mentioned? A. In Antwerp these surveyors are practical men always members of the Nautical Committee of the Court of Commerce of Antwerp.

Deposition of Joseph Collard

"Q. These surveyors of the Nautical Tribunal of Antwerp are former Masters of ships, are they not? A. Yes."

[554] Mr. Zisgen: Continuing right from there:

"Q. In instances in which the question to be decided depends upon technical knowledge in fields other than that of navigation of ships to what sources do the Belgian courts turn for assistances? A. When cases do not concern navigation or stowage, the courts have recourse to other experienced specialized men in one or the other field.

"Q. In the field of chemistry for instances to whom do they turn? A. For these cases the court would generally appoint a chemist or a professor of merchantable goods.

"Q. Do you know the names of any chemists that the courts of Antwerp have consulted in such instances? A. From memory I know that the Court already appointed Mr. Desmurs and Mr. Angelot.

"Q. Have you ever known them to appoint or consult Dr. Jules Aeby? A. Mr. Aeby is very well known as author of the book, 'Dangerous Goods'. Personally I have never had him in cases which I have treated as being appointed by the Tribunal.

"Q. Have you known of any instances where the Tribunal of Antwerp has appointed him? [555] A. I do not know of any cases in which Mr. Aeby would have been appointed but I know that before the Court often use has been made of his book in the course of cases.

"Q. By that you mean use has been made of his book by the attorneys? A. Yes.

"Q. When you say his book, you mean, do you not, this book"—

That was then identified, your Honor, as the third edition, the 1938 edition, which has already been offered in evidence here.

That is all I think I wish to read.

* * *

Deposition of Jacques van Doosselaere

Deposition of another Belgian attorney, whose name is Jacques van Doosselaere:

"Q. Sir, would you state your name for the record. A. Van Doosselaere, Christian name Jacques.

"Q. Are you a resident of the City of Antwerp? A. Yes.

"Q. Are you a member of the legal profession in [556] this city? A. I am.

"Q. Would you please tell us a little about your preliminary education? A. I went to school at the Lycee d'Anvers. Then I went to the University of Brussels. My diploma was delivered in October 1932 and I became avocat in Antwerp the 20th of October 1932.

"Q. You are then an attorney licensed to practice in the port of Antwerp? A. Yes.

"Q. Before what courts in Belgium are you entitled to practice? A. I am entitled to practice before all the Belgian courts except the Supreme Court which we call 'Cour de Cassation'.

"Q. Since your admission to practice law in 1932 have you specialized in any particular branch of the law? A. Yes, I have.

"Q. In what did you specialize? A. I have specialized in the maritime branch.

"Q. Would you name any legal conferences or societies of which you are a member and if you hold an office or officership in any of them so specify? [557] A. Yes, I am a member of the International Law Association, Belgian branch, and I have followed a few meetings of International Law Association, I went years ago to Cambridge for instance. I am also member of other associations like to give you an example the 'Association Capitan,' that is not maritime.

"Q. Are there any other maritime legal associations of which you are a member? A. Yes, I am a member of Association Belge de Droit Maritime, and I have to go in September to Madrid to the meeting of the Comite International to report for the Belgian branch.

Deposition of Jacques van Doosselaere

"Q. Are you in any way connected with any legal publications or reviews? A. I have been doing very long years the secretary of the Jurisprudence du Port d'Anvers and am now one of the directors of the Jurisprudence du Port d'Anvers.

"Q. Exactly what does that organization do? A. We are publishing in that Review the most interesting decisions of the Court of Appeal or ordinary courts relative to maritime cases.

"Q. Are you by any chance a professor, a judge or anything of that nature? A. I am what you call in French 'Juge Suppleant [558] au Tribunal de Premier Instance civil et correctionnel' at Antwerp.

"Q. Would you explain please in a few words just what your duties and functions are in respect to your answer to the last question. I can't repeat in French. A. You see in Antwerp 14 lawyers at the same time substitute judges or 'juge suppleant' at the Court in Antwerp.

"Q. Under what circumstances do you sit as a judge? A. In special circumstances when we have to replace provisional judges, I would say 'juges de carriere' who are absent on leave or are ill.

"Q. In what type of cases would you be called upon to sit as a judge? A. It would only be in civilian cases and criminal cases.

"Q. No maritime case? A. No maritime case. It could happen, not often, but it could happen because some maritime cases are tried before the civilian court when one of the parties involved in the case is the Belgian state or the town of Antwerp. It cannot be sued before the commercial court so they have to be sued before the civilian court. It could happen that in such a case I have to sit as a judge.

[559] "Q You mentioned earlier I believe that you had specialized in martime law. Could you name for us a few of your representative maritime clients. A. I should first name the Black Diamond Lines. I can also name the

shipping company Lykes Bros. or the Belgian shipping company, Belgian Fruit Lines, Hellenic Lines. I am also the lawyer of the Chargeura Reunis, a French Company.

"Q. In addition to shipping companies, do you represent any maritime insurance company? A. Yes, I act very often for the Lloyds Underwriters in London, their agents here Gellatly Hankey & Co. I act sometimes for American International Underwriters, New Hampshire Insurance.

"Q. Have you at the request of Black Diamond Lines reviewed the law, royal decrees, regulations of Belgium together with court decisions with respect to presenec or absence of any specific law, royal decree, regulations or court decisions pertaining to the stowage of crude naphthalene? A. Yes, I have.

"Q. After your review and study of the Belgian law on that subject, what conclusions did you reach? A. I must say that I do not find in the Belgian [560] laws or decrees or regulations any disposition relating to the stowing and carriage by sea of naphthalene, crude naphthalene in bags.

"Q. Has Belgium, a signatory of and adherent to the Hague Rules Convention and the Conventions for the Safety of Life at Sea 1929 and 1948, adopted any decrees, regulations under those conventions pertaining to the carriage of naphthalene? A. Yes, sir, Belgium has signed the convention relative to the Hague rules, and I'm sorry I did not hear the other you spoke about.

"Q. Convention for Safety of Life at Sea 1929 and 1948 signed at London. A. Belgium has signed also this convention and I think the Belgian law is the law of 1951. After the signing of this treaty Belgium had to establish a full statute relating to the safeguard of life at sea. Belgium has not established a statute in compliment to this Convention.

"Q. I asked you in the last questions, one with respect to you conclusions after reviewing the law in Belgium in

connection with the stowage of crude naphthalene and also in connection with the conventions to which Belgium is the signatory and adherent, do your last answers in [561] respect to those questions apply equally as of 1952 and as of today? A. Yes, sir.

"Q. Have you, sir, at my request within the last week reviewed Smeesters & Winkelmolen, Droite Maritime & Fluviaex, and read and reviewed the cases reported in Jurisprudence du port d'Anvers, volumes 1880 page 342, 1886 page 149, 1922 page 180, as well as the Belgian Code of Commerce volume 2 articles 59 and 66? A. Yes, sir.

"Q. Have you read any other cases dealing with the responsibility of the Captain or Owners of the ship with respect to responsibilities for carrying cargo on deck? A. No, sir.

"Q. In your opinion, based upon cases and texts referred to above, is it necessary for a carrier to obtain the written consent of the shipper to carriage of cargoes on deck? A. As per doctrine and jurisprudence it is not required that the shipper confirms by written statement the consent of shipping the cargo on deck. The authors and the courts say that what the law aims at serves as a way of proof. The authors and law say that when a shipper [562] has accepted a bill of lading showing the loading of cargo on deck and has not protested against these stipulations he has tacitly given his accord that he agrees with the term 'shipped on deck'

"Q. I refer, sir, specifically to the case reported in the 1923 volume Jurisprudence du port d'Anvers the opinion commencing at page 443 the title of the case being Dekkers against Societé Landauer & Co. and Ullivari and others. Have you read that case? A. Yes, sir, I have read that decision.

"Q. What specifically does that case hold or better yet if you could read for us from that opinion, one sentence or one paragraph or several paragraphs covering the question of liability of a carrier for on deck stowage and the fact of the acceptance by the shipper of a bill of lading endorsed

'shipped on deck' or equivalent? A. Yes, sir. You want me to read the French text of the decision?

"Q. Would you read it to yourself, please, silently, and point out anything with respect to that particular problem? A. I remember that the Court of Appeal, Brussels, has confirmed a judgment pronounced by the Commerce [563] Court in Antwerp on the same case one or two years before. I remember that the decision of the Tribunal of Commerce Antwerp has been published, I think, in the same review but in 1922. Here it is, a confirmation of the decision rendered by the Court, Antwerp. Now I shall read the first paragraph and after that——

"Q. If it concerns specifically the question which has been put. A. I think the first paragraph, the second paragraph and the third paragraph and also the fourth paragraph cover the matter.

"Q. What is said by the Court in those paragraphs?" A. The witness then replied, your Honor, in French, and the interpreter who was present was asked to translate the summary which Mr. van Doosselaere, the witness, had just given, and at the bottom of page 4 the translation into English is given, and we will read that:

> "The Court says in its decision that article 66 of the commercial code of the Maritime Law only applies to the consent given by the shipper on the moment of shipment or prior thereto. The Court says that this article does not prevent that the parties to a maritime contract of carriage estab- [564] lish as per the commercial ways of the common law the acceptance which the shipper or his assignee would have given of the shipment loaded on deck by the Master, and the Court adds that this acceptance may result from the fact that the shipper has received without making any reservation a bill of lading showing that certain goods have been loaded on deck.

Deposition of Jacques van Doosselaere

"Q. Are you familiar with the Commission Nautique du Tribunal de Commerce at the port of Antwerp and its functions? A. Yes, sir.

"Q. Have you recently prepared a paper on its duties, functions, etc.? A. Yes.

"Q. When and at whose request? A. At the request of the Black Diamond Lines.

"Q. Where was the paper delivered? A. I have said that I had established notes on the institution in general and added that precisely two days ago at the request of the Maritime Federation of Antwerp I have reported to the directory committee of the Federation Maritime of the actual condition of the Jurisprudence as to the value which must be given to the stowage reports [565] that are delivered by the experts of this Commission.

"Q. Would you please tell us something about the Commission Nautique aupres du Tribunal de Commerce and its functions particularly with respect to the examination of the ships before and after discharge or loading of cargoes at this port? A. One of the missions of the Commission's experts consists to examine, to watch, to survey the stowage of the vessels either during loading in Antwerp or during discharge at Antwerp. It is common use in Antwerp that the steamship companies when a vessel has to discharge in Antwerp address themselves to the President of the Commercial Court and ask of him to nominate experts that are members of this Commission and who are named the stowage experts to verify the stowage. The same custom exists for ships loading at Antwerp. Generally the President designates three experts and this designation is done through an order at the request presented by the steamship companies or their agents the President gives this order and nominates three experts. If you wish I can show you two decisions given by the Court of Commerce in Antwerp, one of which is relevant as to the watching of the ship loading at Antwerp and the other is a more general [566]

decision which indicated the value that has to be given to these surveys, but then surveys in general.

"Q. Will you please refer to the first of the two cases you mention? A. It is a decision from the Tribunal de Commerce d'Anvers 15th March 1938, which you will find in the Jurisprudence du port d'Anvers 1939 page 269. I will read you the two or three paragraphs which I was pointing out. I will first resume what is given in the first part of the decision. The master of the ss TUVA was held responsible of the damage to a load of chalk in bags, and this master to whom faulty stowage was reproached has maintained that he had addressed himself at Antwerp to nautical surveyors, members of the Commission, to check the stowage and see here what the judgment says: 'Bearing in mind that the Captain maintains that before shipping cargo in Antwerp he had taken the precaution to address himself to two nautical experts who ascertained the maintenance and the state of the various holds of the vessel,' and then comes the text of an extract of the report of the nautical surveyors. The declared: 'We went on board of the said vessel where we were and where we have examined the vessel and have found the various compartments in [567] necessary condition for taking cargo for loading.' And afterwards before the vessel sailed the same nautical surveyors who had in the meantime surveyed the stowage of the goods declared that this stowage had been done in accordance with the customs.

"Then comes extract from the surveyors' report: 'Renewing our visits on board during the loading of goods as often as it was necessary in order that we could get a good idea of the stowage of these goods we found that the said goods were stowed in the different compartments with the necessary dunnage and that all reglementary prescriptions were carefully taken care of for the carriage by sea.

"And then the last sentence: 'Bearing in mind that the defendant has consequently concluded that he has effected

with reasonable diligence as imposed by maritime law to prepare his vessel in seaworthy condition and that he cannot be held responsible of damages that are only attributable to bad weather which the vessel encountered in the course of its voyage.'

"This was only to point out that it is the custom of the port of Antwerp to check the loading of cargo and to show you the value that the Court attaches to the surveyor reports."

[568] That is all of his direct, your Honor.

Mr. Zisgen: I will state, your Honor, on cross-examination this witness seemed to me to give substantially the same testimony as Mr. Collard, whose deposition was read a few moments ago. There is only I think one question and answer that I will read in toto, and that is on page 7, and it is this:

"Q. In other words, is it not a fact that even in the case of goods carried on deck with the consent of the shipper, the carrier must not be negligent? A. Yes."

• • •

Deposition of Francois Verworst:

"Q. What is your full name? A. Verworst.

"Q. First name? A. Francois.

"Q. Captain Verworst, you reside here in Antwerp? A. Yes.

"Q. What is your occupation? A. Nautical expert with the Tribunal of Commerce in Antwerp.

"Q. For how many years have you been a nautical [569] expert with that Tribunal? A. Since October 1947.

"Q. Prior to 1947 what was your occupation and how long? A. I have been for about twenty years in the service of the Compagnie Maritime Belge as second mate, first mate and captain.

Deposition of Francois Verworst

"Q. Will you tell us briefly what the duties are of the nautical experts, what work do they do in the course of their ordinary day or week? A. We go daily aboard ships in order to verify the stowage of merchandise as well in loading as in discharging.

"Q. And at whose request, under what circumstances do they board the vessels for that purpose? A. When a ship arrives in Antwerp, the agent in the captain's name brings in a request at the Tribunal of Commerce, in order that a body of three experts designated by the Court of Commerce goes on board to see whether the stowage and the care taken by the ship's personnel is in agreement with the general carriage rules and applies for the particular kind of merchandise. We go so many times a day on board as we judge necessary. We do exactly the same thing for the loading of the [570] goods.

"Q. And also for discharging? A. Yes, for discharging and for loading.

"Q. In your years of experience with the Tribunal as a nautical expert can you tell us approximately how the number of inspections for loading compare with the number of inspections for discharge? A. Roughly speaking they are equal.

"Q. In the course of your inspections do you or do you not issue a certificate or statements? A. Yes, sir, we always give a certificate and there is a small difference. For the loading there are two kinds: one is signed by three nautical experts, surveyors, in case the compliance is done to the Tribunal's request and the other one is signed by two surveyors and is not deposited on the Tribunal.

"Q. In other words if I understand you correctly if the Tribunal of Commerce gets the report, there are three surveyors and if it is a private company or party two? A. No, there is not a private company.

"Q. Applicant, I mean. A. If the applicant goes not through the Tribunal?

Deposition of Francois Verworst

"Q. Yes. [571] A. See, there are two different cases: if the ship's owner or the agent, in the name of the Master, makes the request to the Tribunal, then the President of the Tribunal designates a body of three nautical experts, but if the agent does not do the request in the Master's name but the request comes immediately to the nautical experts' office the certificate that we then deliver is only signed by two experts and is not deposited with the Tribunal of Commerce.

"Q. In the course of your work over the years as an expert, can you tell us whether there has been a usual customary practice by Black Diamond Lines S. A., with respect to requesting or applying for inspections of vessels both for stowage and discharging? A. We do all the vessels of Black Diamond Line as well in discharging as in loading, but for the loading the reports are not deposited at the Tribunal of Commerce and that is why for Black Diamond all the reports are only signed by two experts.

"Q. So far and to the best of your knowledge does or does not Black Diamond Lines S. A. request an inspection of all the vessels or only some of them? A. For every vessel as well in loading as in discharging Black Diamond Lines bring in a request.

[572] "Q. When you say 'bring in' you mean makes a request. A. Yes, request, it is a form.

"Q. Do you keep and make in the course of your duties any record of any kind of the vessels which you inspect, keeping it in your own office? A. Whatever we note during loading or discharge we inscribe in books. For the loading we hold a separate book and for the discharge also a separate book.

"Q. Does that mean a separate book, one for the loading, another one for the discharge? A. Yes.

"Q. Do you recall whether or not you personally made an inspection of a loading on the Black Gull in July 1952? A. Yes.

"Q. Could you without the aid of your book state exactly the day or dates on which you reported? A. No.

"Q. Have you brought with you the book in which you made the entries concerning the Black Gull inspection in July 1952? A. Yes.

"Q. Will you produce that book. [573] A. I produce the book.

"Q. Now, refreshing your memory if necessary from that book, can you tell us when, by date, and where you boarded the Black Gull for that inspection? A. I have been on personally the 4th, the 5th and the 7th of July and the ship was moored at No. 142.

"Q. That is pier 142 at Antwerp? A. Yes.

"Q. Did anybody else from your organization of experts also board the vessel? A. Yes, Captain Casteleyn.

"Q. Were you both together? A. No.

"Q. You went on separate occasions? A. Yes.

"Q. Do you know where Captain Casteleyn now is? A. He is now on holidays.

"Q. Away from Antwerp? A. Yes.

"Q. Did you sign the book you mentioned? A. No, I have not signed the book but I have signed the report which we made.

"Q. Now what report did you sign? A. It is a report which is prepared beforehand [574] and if we have something special to note in it, we note it in this report.

"Q. Do you issue certificates or reports at a time when you are not satisfied with the stowage or the conditions you observe? A. We do not deliver the certificate. I will explain the cases which have presented themselves if they can interest you.

"Q. Did you issue a certificate for the Black Gull in connection with that inspection which you made? A. Yes, and this report has been signed on the 8th of July.

"Q. What is your customary practice in respect to whether or not you in your office prepare one copy or more than one copy and if more than one copy of the report, how

many? A. We remit the copies of the ships which we verify and of which the request has been handed in through the Tribunal to the Tribunal where they are deposited and registered. The others for the loading, if the request has not passed through the Tribunal we remit them directly to the agent.

"Q. How many copies? A. I think two I am not sure.

"Q. That is the original and a duplicate? [575] A. Yes.

"Q. I will show you a document and I'll ask you if you can identify it? A. This is the duplicate of what I have drawn up and the original I have signed.

"Q. What became of the original, insofar as you know? A. One of our clerks has most probably remitted this to Black Diamond Line.

"Q. Is this paper which I have just shown you and which you have looked at a true and complete copy of the original? A. Yes it is absolutely exactly the same."

• • •

(Marked Petitioner's Exhibit M.)

[576] Then from the witness himself, your Honor, he volunteered this:

"Mr. Verworst: I ask you whether it would interest you to see a copy of a request that passes through the Tribunal.

"Mr. Zisgen: Yes."

And the witness presented a document dated Antwerp, 26th July, 1955.

And then I asked the witness: "Will the witness tell us what it says, or the interpreter."

And the interpreter than read into the record, in English, of course, a translation of the document which was produced at the request for inspection, and it reads:

"To the President of the Court of Commerce holding session in Antwerp.

Deposition of Francois Verworst

"Mr. President,

"Captain"—blank, because it was just a blank form—"commanding the Norwegian vessel named BLACK FALCON arrived here from New York requests your Grace to appoint experts in order to certify the closing of the hatches the breaking of masts and pumps also the stowage of the cargo of the aforementioned vessel and your [577] order to be declared executable before registration.

"It is then dated Antwerp July 26th, 1955.

"For and on behalf of the Captain

"Black Diamond Lines S.A."

Then the interpreter continues:

"And then it reads:

"We President of the Court of Commerce holding session in Antwerp in view of the above request name as experts the following gentlemen:"
and those three names follows:

"Dasseville Verworst Aspeslagh former masters with deep sea trade, all residing in Antwerp, to do as formulated in the request.

"Antwerp, July 26th 1955.

"Registered in Antwerp July 27th, tome 417, page 26, linea 18/7

"Received 140 francs—the collector of dues."

Continuing with the examination:

"Q. That document is returned to Black Diamond? A. This paper is remitted as it is to Black Diamond Lines.

"Q. The forms of request have been similar in type and contents to this? [578] A. Yes.

"Q. I understood you Captain, correct me if I am wrong, to state that you had issued the certificate, you and Captain Casteleyn for the July 1952 inspection of the

Black Gull on the 8th of July? A. Yes, that is what is marked in our book; the report has been remitted on July 8th, 1952.

"Q. Will you look at this document"—and I will substitute the exhibit number presently in this case—"Will you look at this document"—Petitioners Exhibit M—"and tell me about the date on that? A. It says the 9th of July and in my book I have the 8th. But it may be that on the 8th the ship left and we made the report on the 8th and we gave it out the next day. So this is the date we give it the Black Diamond.

"Q. So the date on"—Petitioners' Exhibit M—"is the date on which you got the paper off and signed and delivered it? A. No, the 9th is the date we delivered it, the 8th is the date when I signed, because, you see, we sign it for instance to-day and the following day we give it off for delivery.

"Q. Do you recall from your own memory what cargo [579] was on board the Black Gull? A. If I look in the book I can tell you, not from memory.

Q. Refreshing your memory from the book which you have presented, can and will you tell us what cargo was on the Black Gull at the time of your inspection? A. On the 4th of July they loaded iron in No. 1 hold lower hold and 2 lower hold.

"On the 5th they loaded in 5 lower hold bales of burlap and various cases.

"On the 7th in lower hold No. 1 on the forepart tin ingots; on the after part bales of wool. In 2 lower hold crates and plates of marble, bales of cotton waste. In No. 5 lower hold on the forepart, bales of wool and on the after deck bags of naphthalene.

"Q. Do you recall how the naphthalene was stowed which you have mentioned as having been loaded on the after deck? A. As far as I remember, because I do not see any special note against it, they put on the sides

dun age to protect the cargo and as far as I can remember, but of that I am not quite sure, it was so long ago, they put dunnage on the deck too and then the bags were put on and on top they put a [580] rope net which kept the bags together.

"Q. Except for the rope nets to hold the bags together, was there any other coverage on top or on the sides? A. No.

• • •

"Q. Are you familiar incidentally with the fee system charged by your concern? A. No, sir. As a matter of fact I think nobody in our office is concerned with this because we do not receive those fees. See here how it should really go. It is the President of the Tribunal who would have to pay us but in order to do away with all unnecessary trouble and to facilitate work our clerk [581] goes to the different agencies and he collects there the different sums which are due and that is all I know of it.

"Q. Do you know how the rates or the amounts of the fees are? A. I did not know them but I asked them today. It may be very strange to you but if it interests you. All these particulars have to be deposited with the Tribunal of Commerce and in accordance with the President of the Tribunal these rates are effective."

• • •

"Q. How many nautical experts are there in this organization of yours? A. We are eight for the moment.

"Q. And does the number vary at any time? A. Between 7 and 9, but one died a couple of weeks ago so for the moment we are 8.

"Q. Do applicants for inspections have any voice or say in selecting the particular experts who are to make an inspection which is requested? A. No. Through practice we generally know who will be named nobody outside the Tribunal and [582] ourselves know the expert which will come on board.

Deposition of Francois Verworst

"Q. Was this certificate which you say"—Petitioners' Exhibit M—"is the duplicate copy issued after you had completed your inspections of the Black Gull and after you had seen the naphthalene stowed in the manner you have testified? A. Yes, sir, we never sign a certificate before the ships leave to Port of Antwerp. Usually we go before she leaves still on board to see if everything is in order to our satisfaction and then only we issue the certificate.

"Q. Over the years that you have been acting as a nautical expert and inspecting loadings or stowage have you had occasions and if so approximately how many would you say if you can on which you have seen naphthalene, crude naphthalene in bags stowed on vessels? A. I could not tell you exactly the number but there are many ships loading naphthalene in bags in the port of Antwerp but how many I cannot tell you.

"Q. Would it be a large number over the period of a week or a month. Any approximation? A. I cannot give you because for instance for the vessels of the Black Diamond Lines sometimes they load several ships, one after the other, with [583] naphthalene on deck and then sometimes it happened several months that they leave the port of Antwerp without naphthalene and the same thing happens to other ships.

"Q. As a result of your experience and observations, will you tell us whether or not in your opinion this naphthalene loaded on the Black Gull on the occasion of July 1952 which you have mentioned was properly stowed. A. Yes, because otherwise we would not have delivered the certificate.

"Q. In your observation and experience was or was not the manner in which that naphthalene was loaded the usual customary way in which you have seen naphthalene loaded on vessels at Antwerp? A. I repeat again if the naphthalene had not been loaded in accordance with the uses and customs we would never have given the certificate."

Deposition of Francois Verworst

"Q. By what method or in what manner are the members of the nautical experts selected and appointed? A. It is through a general assembly of the Court of Commerce that the experts are installed and then we receive the letter which I show you."

And I asked, your Honor, the interpreter to [584] interpret the letter and he did so for the record, and the interpreter stated:

> "It is emitted from the Court of Commerce in Antwerp, the Cabinet of the President and bears number 1534 dated Antwerp December 24th, 1947.
>
> "Sir, I have the honor and pleasure to bring to your attention that the General Assembly of the Court of Commerce has named you as member of the Marine and Maritime Commission and request you at the same time to keep yourself in accordance with the rules of internal order of the aforementioned commission.
>
> "Receive, dear sir, with my congratulations, my estimation.
>
> "Signed: the President E. Van Kerckhove.
>
> "It is addressed to Francois Verworst,
>
> "J. Rayestraat, 27, Brussels."

Then the cross examination is taken up by Mr. Zisgen.

• • •

[585] "Q. About how many ships both loading and discharging to you personally survey in a year, Captain? A. I cannot tell you.

"Q. It is a very large number? A. Generally speaking in the port of Antwerp between 250 and 300 ships come in a month and we go generally on board of every ship. I not personally but if I do not go one of my colleagues go. It is rather difficult, to have a fair idea I have to look over the books.

Deposition of Francois Verworst

"Q. Well, as a matter of fact, you or one of your colleagues or two of your colleagues or three of your colleagues go mostly on board of those ships twice, do you not, once for loading and once for discharge? A. Yes, in the case that the ship loads here and discharges here. But take the case of Black Diamond, most of the time they first discharge the cargo in Antwerp then go to Rotterdam, Hamburg and Bremen and afterwards they come back; that is a different application but it may be like some other ships they discharge here and after discharge they start [589] right away with the loading.

"Q. The book which you have before you contains no description of the stowage of the naphthalene on the Black Gull does it? A. No, sir, only 'after deck bags of naphthalene.'"

There it is, "bags."

"Q. And you are relying on your memory when you are telling us how it was stowed on the after deck? A. Well, they always do it the same way all the time. They always do it in the same condition.

"Q. So you are assuming that in the case of the Black Gull in July 1952 the stowage was what you have usually seen? A. Yes.

"Q. You do not particularly remember it? A. No. Sorry, sir, but if there was something wrong with it I would have marked it on the certificate.

"Q. But you are relying on the usual method plus the absence of notations on the certificate? A. Yes."

• • •

"Q. What do you know of the characteristics of naphthalene? A. When we are not sure about any cargo, we [590] consult our books we have.

"Q. What books are they? A. American books, English books, French books.

*Deposition of Francois Verwors*t

"Q. Can you name them for me or some of them? A. We have the book 'Dangerous Cargo' from the Minister of War transport. We have the same book in French given by the French Government. We have a standard American book given out by the Department of Commerce.

"Q. Is that 'Modern Ship Stowage'? A. Yes 'Modern Ship Stowage.' Then we have Thomas's book on stowage. We have a French book but I forgot the name of the writer, I am not sure.

"Q. Have you Dr. Jules Aeby's book? A. Yes.

"Q. Do you refer to that? A. We refer to that and we have the latest edition, too."

• • •

"Q. Have you Dr. Jules Aeby's book? A. Yes.

[591] "Q. Do you refer to that? A. We refer to that and we have the latest edition, too.

"Q. I'll show you a book, which has been marked Libelants' Exhibit"—9—"for identification"——

• • •

its present number—"which has been marked Libelants' Exhibit 9 for identification. Is that Dr. Aeby's book to which you refer? A. Yes, but it is not the latest one."

• • •

"Q. Do you know that the vapor of naphthalene is explosive? A. Yes.

"Q. Where did you find that out? A. I have learned it and read in books.

"Q. Which books? A. Chemical books.

"Q. You knew that at the time the Black Gull was—— [592] A. Yes.

"Q. Did you know that there was danger of fire occurring to naphthalene in 1952? A. Yes.

"Q. Was that a matter of general knowledge at Antwerp at that time? A. Yes, sir, I suppose everybody knows. I have read it in books."

• • •

Deposition of Francois Verworst

"Q. The naphthalene stowed on the after deck on the Black Gull at Antwerp was not covered and protected from the rays of the sun? A. No, sir."

• • •

"Q. Actually, Captain, you did not take into consideration at the time you were on the ship the possibility or the likelihood that there might be passengers on the ship and that they might smoke, did you? A. As I told you, sir, we are not interested in the crew or in the passengers.

"Q. You gave no thought to the crew or the passengers? A. It is not my mission. My mission consists only in verifying if all the necessary precautions have been taken."

[593] "Q. The naphthalene stowed on the after deck on the Black Gull at Antwerp was not covered and protected from the rays of the sun? A. No, sir.

"Q. Do I take it that you disagree with Dr. Aeby as to the proper manner of stowage of napthalene on deck? A. Yes.

"Q. And that you did disagree at that time? A. Yes, and a proof of it, if I may point out to you that in his new book he has changed, he has said that it is 'preferable.'"

And the word "preferable" is quoted.

Then Mr. Zisgen continuing:

"Q. In your opinion, in July 1952 the covering of [594] the napthalene would not have averted any danger, is that correct? A. If I have well grasped the question, the covering of the napthalene would not have averted any danger? Is that what you asked?

"Q. Would have lessened any danger. A. If gases would have been produced, gases can evaporate more easily than if it had been covered."

• • •

"Q. Once the ship has sailed and a certificate in the form of"—Petitioners' Exhibit M—"concerning her load-

ing has been issued, you have no occasion as a rule to issue another certificate; have you not? A. No, sir, never. We never do for the same shop."

Q. For the same ship and for the same voyage? A. No, oh, no.

"Q. Is this your signature at the bottom of the sheet which I show you. A. Yes."

• • •

[595] Mr. Pyne: This document marked at the examination as Libelants' Exhibit 8 for identification, Mr. Zisgen inquires:

"Libelants' Exhibit 8 for identification is in the English language, is it not, Captain Verworst?

"A. Yes.

"Q. When did you sign that? A. I could not remember that. I do not remember when I signed it.

"Q. Does your book contain any reference of an application for that document? A. No, sir.

"Q. You remember you signed it? A. Yes, but which date I do not remember.

"Q. Do you remember who asked you to sign it? A. No, sir, I cannot remember.

"Q. It was not before the Black Gull sailed? A. No.

"Q. It was after that? A. It was after that but I cannot tell the exact date.

[596] "Q. Do you remember how long after? A. No. I cannot say any date because I am not sure.

"Q. If no application was made for this certificate Libelants' Exhibit 8 for identification, how is it that it bears this stamp of the Nautical Commission of the Tribunal of Commerce? A. Because we sign it, my colleague Captain Casteleyn and myself and we put the stamp.

"Q. But it is not an official certificate of the Nautical Commission? A. No, sir.

Deposition of Dr. Jules Aeby

"Q. The official certificate is Jolund Exhibit 4 for identification? A. Yes."

And that Exhibit 4 is now Petitioners' Exhibit M on this trial.

• • •

"This document, Captain, which has been marked Exhibit 8 for identification you say was signed by both you and Captain Casteleyn? A. Yes.

"Q. But you cannot recall when? A. No. Otherwise I would say it.

[597] "Q. Does that document represent your true and personal opinion and your best recollection of the facts?"

And the witness says "May I read it first?" and he reads it and answered "Yes."

• • •

[598] Dr. Aeby's deposition, • • •

"Q. Doctor, I am going to ask you to assume that an ordinary cargo vessel which is fitted with a midshiphouse, has forward of the midshiphouse three hatches and aft of the midshiphouse two hatches and that that vessel has a cargo of crude napthalene which is in burlap jute bags carried on her deck both forward of the midshiphouse and also aft of the midshiphouse and that those bags of napthalene are fastened and secured in place with rope nets but not otherwise covered and that they are placed in tiers or layers five or six bags or thereabouts in height. I am going to ask you to assume that that vessel with that cargo of naphthalene on the [599] open deck sailed from Rotterdam July 11th, 1952, bound for New York and of course on a course through the North Atlantic and I am going to ask you to assume that the log book, the deck log book of that

vessel shows the temperatures recorded at the end of each four hours watch and that all of these temperatures are in Centigrades and that on the first day, July 11th, the temperatures ranged from the highest of 18°C at noon time to the lowest of 16°C at 8 o'clock in the morning and 16°C at midnight. That on the following day July 12th the highest temperature was at 4 o'clock p.m. 18°C, the lowest 16°C at 4 a.m., that at 8 p.m. it was 18°C and the other watches 17°. That on July 13th the highest temperature was at noon 22°C, the lowest 17° at midnight and the other watches were 18° four in the morning, 21° 8 o'clock in the morning 20°C 4 o'clock in the afternoon 19° at 8 p.m.

"That on July 14th the highest was 22° at noon, the lowest 16° at 8 am and that at the other watches was 4 am 17°, 4 pm 21°, 8 p.m. 19°, midnight 18°.

"July 15th, highest at 4 in the afternoon, 4 p.m., 23°, the lowest 19° at 4 a.m. and midnight, 20° at 8 am and 8 pm and 22° at noon.

[600] "July 16th: the highest was 20° at 4 am, 19° at 8 am, 18° at noon, 19° at 4 pm, 17° at 8 pm and midnight.

"July 17th, the highest temperature was at noon 23°.

"On the other watches 17° at 4 am, 16° at 8 am, 22° at 4 pm, 21° at 8 pm, 22° midnight.

"That on July 18th on which day a fire occurred on that vessel, the highest temperature was 25° at noon, the lowest at 4 am 19°, 8 am 20°. At noon the highest temperature was 25° and at 4 pm 23°, at 8 pm 22°, and I am going to ask you to assume that at or shortly after 11 o'clock at night, 11 p.m., 23 o'clock, a fire was discovered in the napthalene abreast that portion of it that was abreast of No. 4 hatch, which is one of the two hatches aft of the midship-house. I am going to ask you to tell us whether or not in your opinion [601] the sun's rays could have been either a cause or a contributing cause to that fire."

• • •

Deposition of Dr. Jules Aeby

• • • we presented the witness also with a copy of the plan of the ship itself, which had then been marked for identification and has now been marked in evidence here as an exhibit.

And with those additional facts given to him, the question is repeated:

"I am going to ask you now based on those facts, whether or not in your opinion the rays of the sun which had occurred on that voyage have or could have been a cause or a contributing cause of the fire [602] which broke out in the napthalene on deck on the port side of the vessel alongside of No. 4 hatch. A. My answer is no.

"Q. Would you be kind enough, Doctor, to explain or define for me what is meant by flash point of a commodity? A. The flash point of a commodity is the temperature at which the commodity takes fire when approached by an open or naked flame."

• • •

Those temperatures are all in centigrade, are they not?

Mr. Pyne: That is right—the question to the witness so stated.

• • •

[603] "Q. Is it true, Dr. Aeby, that in respect to carriage of goods at sea, many commodities may be dangerous, hazardous, semi-hazardous, by reason of different factors? A. Yes, that is so."

"Q. In your work 'dangerous goods' are your remarks —I am referring to any or all editions that we have been discussing this morning—are your remarks under the heading of packing and stowage meant to be absolute? A. No.

"Q. Could you explain, sir? A. My explanation is given very clearly in the last edition in which I say that my recommendations will serve as guide and not as regulations."

• • •

Nils Valen—For Petitioner—Direct

[606] Mr. Pyne: Mr. Valen, will you take the stand?

Your Honor, Mr. Valen, whom I am now calling, was the third officer of the Black Gull.

• • •

[608] NILS VALEN, sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Valen, by whom are you now employed? A. Sigurd Herlofsen & Company.

Q. Are you presently a member of the crew of any vessel, and if so, what vessel? A. On board the Black Hawk.

Q. Is the Black Hawk in the Black Diamond Steamship Corporation service? A. Yes.

Q. Are you a licensed mariner? A. Yes.

Q. And what license do you hold? A. Mate's certificate.

Q. Is that a Norwegian license? A. Yes.

Q. How long have you held that mate's certificate? A. Since June '47.

Q. All told, total number of years, how long have you been going to sea? A. Since March 1937.

Q. Were you formerly a member of the crew of the Black Gull? A. Yes.

[609] Q. When did you first join the Black Gull? A. April 4, 1951.

Q. And did you remain on board in service of the Black Gull down to the time of the July 1952 fire? A. Yes.

Q. In what capacity? What was your job on the Black Gull? A. Third officer.

Q. Before you served on the Black Gull did you serve on any other vessel in the Black Diamond Steamship Corporation service? A. Yes.

Q. What vessel or vessels and for how long? A. I was on board the Black Heron from October 1950 until the beginning of February 1951.

Mr. Longley: Is that the Black Heron?
(Record read.)

Q. Is that all the service on the Black Diamond Steamship Corporation vessels in that service prior to joining the Black Gull? A. Yes.

Q. Now, after you left the Black Gull, have you continued in service on vessels which were in Black Diamond Steamship Corporation trade? [610] A. Yes.

Q. What vessel or vessels have you been serving on since the Black Gull fire? A. Black Falcon, Black Heron and Black Hawk.

Q. How long were you on the Black Falcon? A. From August 1953 until October of the same year.

Q. How did the Black Falcon compare with the Black Gull? A. They are alike. They are sister ships.

Mr. Pyne: I have, your Honor, a set of several photographs of sections of the Black Falcon. They were taken, as shown on their face, in February of this year. I have shown them to the cargo proctors beforehand.

Q. I will show you a photograph (handing to witness) and ask if you can tell me what part or portion of the vessel represented on that photograph is indicated. A. The forward part of the lower bridge seen from aft.

Q. Which side of the lower bridge? A. The port side.

Q. And how do these conditions shown in that photograph—that is, the structural conditions of the [611] decks, rails, bulwarks—compare with the conditions which existed on the Black Gull during the voyage on which the fire took place? A. They are exactly alike except the furniture there.

Mr. Pyne: With the permission of my brother attorneys, your Honor, may I state I was personally present when these photographs were taken and that except for the two chairs and the table all of the other articles to which he is referring, which are shown in this photograph, are games or parts of games, shuffleboard of one type or another.

There is a thing that looks as if it might perhaps be a cigarette or cigar container, but that is not the case, it is part of a game.

With that explanation and the witness's testimony I will offer the photograph in evidence.

(Marked Petitioners' Exhibit O.)

Mr. Pyne: Unless there is some objection, your Honor, I can also go on and state, and it will save time if I state exactly what parts are here of these various parts shown.

The Court: Any objection to his attempting that?

[612] Mr. Longley: I think it would be better to have the witness state it.

Q. I show you another photograph (handing to witness) and ask if you will state to us what is indicated or shown there. A. It shows the lower bridge on the port side.

Q. Looking from where to where? A. That is, it looks as if they had been standing about midships and looked toward port.

Q. I notice on the right-hand side of that photograph there is a stairway or ladder. Where does that lead to? A. Up to the upper bridge.

Q. When you say the upper bridge, is that the navigation bridge where the pilot house is and then the open wings on each side? A. Yes.

Q. And how do the conditions in that photograph compare with the conditions, arrangements, structural and other, on the Black Gull on the July 1952 voyage on

which the fire occurred? A. Exactly the same as on the Black Gull.

Mr. Pyne: I offer that in evidence, your Honor.
[613] (Marked Petitioners' Exhibit P.)

Q. I show you still another photograph (handing to witness) and ask you to identify what part or portion of the vessel is shown there? A. It shows the port side of the lower bridge. That is from forward looking aft.

Q. And again, how did the conditions compare with those on the Black Gull as of July 1952? A. Yes.

Q. I say, how do they compare? A. They are alike.

Mr. Pyne: I offer that in evidence, your Honor.
(Marked Petitioners' Exhibit Q.)

Q. I show you still another photograph (handing to witness) and ask you to identify, if you can, what part or portion of the vessel is shown there? A. The picture is taken from the port side lower bridge and it shows the sun deck, which is about the boat deck, and also the port lifeboat.

Q. How do the conditions in that photograph compare with the conditions on the Black Gull on the July 1952 voyage prior to the fire? A. They are the same.

Mr. Pyne: I offer that, your Honor, as an
[614] exhibit.
(Marked Petitioners' Exhibit R.)

Q. I show you still another photograph (handing to witness) and ask you to identify the part or portion of the vessel shown. A. It is the port side of the boat deck taken from forward, showing aft, and is the after part of the boat deck.

Q. And how do the conditions there compare with those on the Black Gull on the July 1952 voyage prior to the fire? A. They are the same as on the Black Gull.

Q. Over on the left-hand side lower portion of that photograph there is an article or piece of furniture shaped like a bench. Will you tell me what that is? A. It is a lifebelt chest.

Mr. Pyne: May I offer that in evidence, your Honor?

(Marked Petitioners' Exhibit S.)

Q. Will you tell us, Mr. Valen, how if at all the arrangements on the Black Gull on the starboard side of the lower bridge and on the starboard side of the boat deck compared with the arrangements, [614a] equipment and so on, which were on the port side? A. Yes, they were alike.

[615] Q. On the starboard side of the boat deck on the Black Gull, was there a box such as shown in this last photograph, Exhibit S, containing life preservers? A. There was one exactly like it.

Q. In service on Black Diamond vessels, that is, on vessels in Black Diamond service, how many round trip voyages, approximately, between European and United States ports, have you made? A. Nineteen or twenty voyages.

Q. Does or does not that include all of the voyages, both before, during and after your service on the Black Gull? A. Yes.

Q. When the Black Gull loaded at Antwerp and Rotterdam early in July 1952, for a voyage to the United States, were you present during that loading or a part of it? A. Yes, partly.

Q. When you say "partly," will you explain what you mean by that? A. We were running watches.

Q. When you were running watches, do you mean by that that you were on deck during your watch? A. Yes.

Q. When the Black Gull sailed from Rotterdam on [616] that voyage—and if need be, you can look at the

log book, but I take the date July 10, 1952—did you see the deck cargo on the Black Gull? A. Yes.

Q. As third mate on the Black Gull, while the vessel was underway navigating, did you stand a regular watch? A. Yes.

Q. What was the watch, where were you and what did did you do—just generally? A. I was on the watch from 8 to 12 in the morning and 8 to 12 at night. I was all the time on the bridge and had to do with the navigation of the ship, lookout, etc.

Q. Excepting for your times on duty on the bridge in the 8 to 12 morning and night watches, were you on the bridge as watch officer at any other time ordinarily and usually? A. I was on the bridge at night relieving the chief officer in order that he could go and get his supper.

Q. You have stated that you were on deck while the Black Gull was loading cargo during your watch. Now what work did you do at that time? A. It was my job to see that no damage was caused to the ship or the cargo.

[617] Q. Was it part of your job while you were deck officer to make entries in the rough deck log? A. It was my job to enter into the scrap anything that happened on my watch.

Q. And did you make those entries at the time in the regular part of your duty? A. I used to do it at the end of the watch.

Q. Refreshing your memory from Petitioner's Exhibit E which has been identified as the rough deck log, will you tell us that date and the hour, clock time, that the Black Gull left Rotterdam on the voyage in July 1952? A. (After examining) It was Thursday, July 10th, 1952, at 22.33 o'clock.

Q. In the loading and stowing of the cargo on the Black Gull for this voyage, who performed the actual work of the loading and stowing? A. Stevedoring firm.

Q. During the loading and stowing at any time did you, as deck officer or otherwise, ever give any orders, instructions or directions with respect to the loading and stowing? A. No.

Q. Now when the vessel, the Black Gull, sailed from Rotterdam at the time and on this voyage that you mentioned, did you personally see the deck cargo [618] A. Yes.

Q. Briefly, what was the deck cargo? A. It was bags of naphthalene on the forward and after deck; there was also 33 drums of chemicals on the after deck; then there was a sailing yacht on No. 2 hatch.

Q. Will you tell us how this naphthalene was stowed on deck? A. It was stowed there fore to aft, a space three feet away from the hatch coaming and on the sides there was something like a fence of dunnage, spaced about one foot off the bulwark, and there were stores six bags high. The lowermost tier was stowed athwartship with a small space between every third bag.

Q. Were the bags secured or made fast in any way? A. We had nets of manilla rope on the top and sides—on top and on the sides.

Q. You have stated that the lowermost, the bottom tier of bags, had spaces between the bags, is that right? A. Yes, it was a small space between each third bag.

Q. For what purpose? A. In order that water could get out.

Q. How about the other tiers up above the first or lowermost tier? A. They were stowed fore and aft, [619] tightly together.

Q. Except for the burlap or jute bags themselves and manilla nets which you have mentioned, was the stow of napththalene covered in any other way? A. No.

Q. What was the condition of this stow of naphthalene in bags when is was completed, in so far as concerned the top and the sides of the stow? A. They were stowed tightly together—it was a compact stowage.

Q. On the top or on the sides of the stow, were there any openings or crevices between the bags or in the bags any place? A. No.

Q. If an article of any kind were dropped on the stow or thrown against or blown against the sides of the stow, could that article find its way into the inside of the stow? A. No.

Q. No? A. No.

Q. You have told us the number of voyages you made between Europe and the United States on vessels in Black Diamond service—how many did you say there were? A. Nineteen or twenty voyages.

Q. On any of those voyages other than the July [620] 1952 voyage on the Black Gull, did those vessels carry deck cargoes of crude naphthalene in bags? A. Yes.

Q. And how did the method of stowage on those other voyages and trips compare with the method of stowage on this Black Gull trip on which the fire occurred?

Mr. Longley: If the Court please, I think at this point I will object to this line of examination. It doesn't make any difference, I submit, if there were a thousand voyages stowed exactly like the Black Gull, if in fact the stowage on the Black Gull was forbidden by law. I will object to this line of interrogation therefore, as irrelevant.

The Court: That would be my deciding the question whether the manner of stowage was forbidden by law, on this objection to the introduction of evidence, and I do not think that that is a proper way of deciding the question. If I should find that the method of stowage was forbidden by law and if I should find that that made any difference under the fire statute and the Carriage of Goods by Sea Act, why of course the fact that it had been infringed over and over again wouldn't make any difference, but for the present I will overrule your objection.

[621] Mr. Longley: So that I will not keep repeating it, may it be understood that that will be my position on that line?

The Court: Oh, yes.

Mr. Longley: I thoroughly understand your Honor's wish to reserve decision on it.

The Court: Oh, yes, that question of law cannot be eliminated from the case. It won't be eliminated by your failure to repeat it constantly.

Mr. Pyne: You probably will have to have the question read to you.

(The interpreter speaks to the witness.)

A. It was the same stowage.

Q. You have made reference to drums, as you called them, of a chemical, and I think you stated 33 drums of a chemical which were stowed on the deck of the Black Gull. Where were they stowed? A. They were stowed at the forward part of the masthouse on the after deck, that is, the masthouse is about abaft of the No. 4 hatch.

Q. With respect to the hatch coaming of No. 4 hatch, or the after hatch coaming of No. 4 hatch, where were these drums of chemicals? A. This was a space away from the hatch coaming.

[622] Q. Do you recall approximately how wide that space was? A. About a couple of feet.

Q. Will you tell us how those drums of chemicals were stowed? A. They were stowed closely together and lashed with wire, and there was a tarpaulin on top of them.

Q. Did you yourself take any part in the stowage of those drums of chemicals? A. I was along lashing same.

Q. Was anybody else working on or assisting in the stowage of those drums, and if so, who? A. Do you mean by lashing?

Q. Well, who did any work at all in the stowage of those drums of chemicals, who was present and who did any work

in connection with it? A. The longshoremen loaded and stowed them and I was along assisting in lashing them, together with the second officer and assistant to Captain Hollaar.

Q. Now while you were on the Black Gull on this voyage on which the fire occurred, will you tell us whether or not on the open deck anywhere there were any signs or notices of any kind concerning smoking? A. There were warnings as to smoking in several places.

[623] Q. I show you, Mr. Valen, a plan of the Black Gull which has been marked Libelants' Exhibit 17, and I will ask you to please mark on that plan with a red pencil the location of each of those signs (handing witness)? A. There were painted such warnings, one on each side of the forecastle bulkhead at the ladder (marking).

Q. Let me interrupt for a moment. What was the type of sign? What did it read? How big were the letters? A. It was written in English "No Smoking," with red letters on white background, and the letters were about five inches high.

[624] Q. Will you continue, Mr. Valen, and mark the exhibit at any other place or places, if there were any, where such signs were painted? A. (Witness marks on exhibit) At the forward masthouse, in the after part of the masthouse, the same masthouse, in the forward and after part of the next masthouse.

Q. When you say "next masthouse," will you identify it; is it forward, the second one from the bow? A. It is still the second one, the forward part of midships.

Q. The forward part of the midships what? A. Midships house. At each side of the midships house right abreast of the gangway entrance, the after part of the midship house, on the forward part and after part of the masthouse on the after deck.

And there was one in the forward part of the poop deck, at least one in the forward part of the poop deck.

Q. Have you completed, to the best of your recollection, the location of each and all of those signs? A. Yes.

Q. Was there any sign or signs or that or any [625] other kind on the boat deck anywhere? A. No.

Q. And how about the lower bridge. Were there any such signs on the lower bridge? A. No.

Q. Where, Mr. Valen, on the Black Gull and particularly on this July 1952 voyage, was your cabin or sleeping quarters? A. Room No. 2. It is room No. 2 on the starboard side, figured from forward, on the main deck.

Q. That is in the midships house? A. Yes.

Q. Where were the crew's quarters, except the officers and stewards? A. Aft.

Q. That would be in the poop? A. Yes.

Q. At any time, Mr. Valen, did you personally ever go inside or see the inside of any of the passenger cabins? A. Not during that voyage.

Q. At any time I asked you.

• • •

[626] A. I lived in one once.

Q. For how long? A. For about a week.

Q. And when was that? A. The first week that I was on board.

Q. In what month and year was that? A. In the beginning of April 1951.

Q. And which cabin was that? A. The aftermost room on the boat deck.

Q. At that time will you tell us whether or not there were any signs or sign in that cabin?

Mr. Longley: I will object to the question as irrelevant.

The Court: Sustained. You mean because of the time?

Mr. Longley: This is something more than a year, about a year and three months, before our voy-

age. He says there is a sign in this one cabin where he lived. There may have been a sign at that time in every cabin on the ship. It does not make any difference as to our voyage.

The Court: I think it goes to the weight. The objection is overruled.

A. There were two signs in there. On one it stated when the meals were, that you should not smoke [627] in the dining room, and which lifeboat you belong to, and where the lifebelts were to be found.

Q. You spoke of two signs; what we want to know is what is your best recollection as to the contents of both those signs. A. I have stated that. On the other sign it was written "Don't throw cigarette butts, cigar butts or burning matches out through the porthole or over the ship's side."

Q. Have you now completed your answer? A. Yes.

Q. On this voyage of the Black Gull out of Rotterdam, between Rotterdam and the United States, in July 1952, leaving Rotterdam July 10th, did you ever see any person smoking on the deck, anywhere on any deck of the Black Gull? A. No.

Q. Did you yourself personally while on deck or while on duty on the Black Gull ever smoke? A. I never smoked on deck.

Q. Did you smoke anywhere while you were on duty? A. Smoked in the chart room and the wheel room or wheelhouse.

Q. On the night of the fire what time did you go [628] on watch or on duty? A. About half past eight.

Q. And where did you go then? A. I was on the bridge.

Q. Previously that evening had you also been on deck duty, the navigation bridge or pilothouse? A. Yes, I had previously relieved the chief officer from about 6 o'clock until 7:30.

Q. During the time that you were relieving the chief officer at the time you have mentioned, did the chief officer or the captain or both of them come to the navigation bridge? A. Yes, the chief officer came to relieve me again, and the master also came up.

Q. When did the master come up and for what purpose? A. The captain came up at about the time we passed Nantucket Lightship.

Q. What time, and if need be refresh your memory from the log book, did you pass Nantucket Lightship? A. That was at 1924.

[629] Q. Did you take an observation of Nantucket Lightship? A. Yes.

Q. What was it? A. It bore 360 degrees true, 8 miles off by radar.

• • •

[630] Q. Mr. Valen, during the time that you were on watch, on the bridge relieving the mate for dinner, did the captain come to the bridge, the navigation bridge? A. Yes.

Q. Did the chief officer come there? A. Yes.

Q. Do you know why or for what reason they came? A. The captain came up because I rang down by telephone to tell him that we would soon pass the Nantucket Lightship, and the chief officer came up in order to relieve me.

• • •

[631] Q. Except for passing Nantucket, was there any other time that you know or heard of when the captain left dinner? A. Will you read it please?

(Question read.)

A. Not that I know.

Q. Now, with respect to the chief officer, how about him? A. I don't know of any reason.

Q. Well, did he come at any time except to relieve you during dinner?

Mr. Longley: If your Honor please, we are wasting an awful lot of time on this.

Mr. Pyne: I will take it for the two men.

Mr. Longley: It is of complete unimportance and highly irrelevant whether the master and the chief officer left the dinner or whether they did not. The passengers said that but it has no relation to this case. We are wasting time.

The Court: Well, I can only tell that by prophecy.

Mr. Pyne: I am glad to hear it is unimportant, your Honor, because I did not know what inference or argument was going to be made because of that [632] passenger's testimony.

The Court: All right, then we can drop it.

Mr. Pyne: I am quite satisfied.

Q. Now, on the Black Gull, was there any regular routine with respect to the wheelsman and the lookout changing places? A. There were two men on watch on the Black Gull, and they relieved each other in such a way that they had one hour at the wheel and one hour at the lookout.

Q. Now, while you were on watch on the night of July 18, 1952, as deck officer, did anything unusual occur, and, if so, when and what? A. Yes. The time was about ten past eleven when I went out on the starboard wing, when I heard a sound which I thought was coming from aft.

Q. How do you fix that time of ten past eleven? A. Yes, I know, because the ordinary seaman had been at the wheel from ten to eleven and he went down soon thereupon soon before.

Q. Can you describe as best you can the sound that you mentioned? A. I can say it was a hollow dull bump sound.

Q. I did not get the word after "hollow."

• • •

[633] Q. Now, did you do anything and what did you do? A. I turned around and then I saw some smoke and a small flame coming from the after deck portside just abaft—abreast of No. 4 hatch.

Q. Did you take any action or do anything then? A. I ran down on the port side to the sun deck which is above the boat deck.

Q. I will show you Petitioners' Exhibit R and ask you whether you can indicate what deck you are talking about (handing to witness). A. I talk about that sun deck there (indicating).

Mr. Pyne: Can we mark it in any way or describe it, your Honor?

The Court: You can have him mark it "SD."

Q. On what level is that deck—level with what? A. It is at the same height as the deck on the lower bridge.

Mr. Pyne: In accordance with your Honor's suggestion, might I put "SE" on that deck that he pointed out?

Mr. Longley: This is on Exhibit R?

Mr. Pyne: That is on Exhibit R, yes.

The Court: What does "E" stand for?

Mr. Pyne: I understood your Honor to say [634] to have it marked "SE."

The Court: "SD."

Mr. Pyne: Oh, "SD."

(Mr. Pyne marks.)

Q. Now, what did you do when you got to that sun deck? A. I ran back in order to call the master and I met him in the alleyway to his room.

Q. And what did you do on that deck? A. I ran back to the bridge and gave a signal which passed to all passenger rooms and alleyways--which passes to all passengers

and crew alleyways. Then I ordered the man at the wheel to give port helm. Then I rang the engineer on watch to ask for water on deck. And at the same time as I ordered port helm the captain came on the bridge and ordered "Hard aport," and took over the command.

Q. What then did you do? A. I ran down on the boat deck and then on to No. 4 hatch, and took a water hose and commenced to extinguish.

Q. When you got to the main deck where No. 4 hatch was, was there any other person or persons there? A. Yes.

Q. Who was there? A. On the boat deck I encountered the chief officer and the second officer, and [635] there were several others; and on the No. 4 hatch there were also several others.

Q. Who were these others? Not necessarily by name, but were they members of the crew or not? A. Yes, they were members of the crew.

Q. Will you tell us what you did when you got to the main deck? A. I got hold of a hose and commenced to extinguish.

Q. From where did you work? A. From the port side of the No. 4 hatch.

Q. Will you tell us what you saw when you arrived at that spot? A. I saw that there was a fire on the top, and I was just going to jump up on top of the napthalene, because it didn't burn in the tier that was closest to the No. 4 hatch, but then I saw that it was burning between the second and third tiers from the top, and I put the water on there in order to try to extinguish it and prevent the fire from getting to No. 4 hatch.

Q. When you jumped or got onto the top of No. 4 hatch you have mentioned that you saw fire on top. Will you explain where on top you saw the fire? A. It was on top of the stowage of bags, about at [636] the middle of the stowage.

Q. When you say "middle," are you referring to fore and aft or side to side? A. Sideways.

Q. And abreast of No. 4 hatch, how was it, in a fore and aft direction, that middle spot? A. It was a little forward of the middle of the hatch.

Q. You have referred to the second and third bags. Will you explain what you mean by that?

The Interpreter: He said "tiers."

Mr. Pyne: I am sorry, the second and third tiers of bags.

A. I meant on the side of the stowage between the second and third tiers.

Q. Which side? A. On the inside of the stowage.

Q. And second and third tiers from where? A. From the top.

Q. What did you see there? A. I saw that it was burning there.

Q. With respect to the bags above that place on the side where you saw the burning on the side, what was the condition on the top? A. They didn't burn.

[637] Q. Now did you prepare a rough drawing or diagram at my request to illustrate what you saw when you first got on top of No. 4? A. Yes.

Q. When did you do that? A. Yesterday.

Q. I will show you this piece of cardboard or article (handing to witness), and will ask you if that is the drawing that you prepared? A. Yes.

Q. I will ask you to take it, if you will, and explain to us just what you mean, and illustrate where it was, that you saw these fires that you are mentioning when you got on top of No. 4 hatch. A. This is No. 4 hatch (indicating).

Mr. Pyne: He has it marked in Norwegian. Would you be good enough, 'aptain Lynner, to write the English under the Norwegian in each of these places where the witness has written in Norwegian.

The Interpreter: That is the port coaming, No. 4 (writing).

A. (Continuing) This gangway (indicating).

Q. Let me ask you this: by "gangway" do you mean the open passageway between the hatch coaming and the side of the stow of bags of napthalene? [638] A. Yes.

Q. Proceed. A. Stowage seen from the inside. Top of stowage. Forward part. Seen from forward end.

Mr. Pyne: Does he mean this line which is nearest forward, to be the end of the stow, or did it extend beyond that?

The Witness: No, the stowage is further forward.

Q. Using that cardboard and diagram, will you explain now again to us where you were, what you saw, and what the marks particularly the red marks on that diagram indicate? A. I was standing about here (indicating).

Q. Put an X mark for "here"—"I was standing about here." A. Standing here (indicating). And I saw that it was burning over there.

The Interpreter: Pointing to the red mark.

Q. On the top? The red mark on the top of the stow. A. On the top, yes.

Q. Now proceed. A. And I was going to jump on top of the naphthalene in order to get a better chance to extinguish, but then I saw that it was burning between the second and third layers from on top.

Q. Indicating the red mark on the side of the stow.

[639] The Interpreter: Indicating the red mark on the side of the stow.

A. (Continuing) Then I remained standing here.

The Interpreter: Marked with a cross.

A. (Continuing) And played water against the fire there—had the water playing against the fire there.

Mr. Stonebridge: May I ask one question. Was it burning on the inside of the stow when you looked there?

The Witness: Yes, that is the reason I did not jump on top of the naphthalene. But up here (indicating) it didn't burn.

Mr. Pyne: Pointing to the top tier at the edge or side.

The Interpreter: Yes.

Mr. Pyne: May I offer that diagram now as an exhibit, your Honor.

(Marked Petitioner's Exhibit T.)

Q. Were there any other hoses or any other fire extinguishing apparatus being used while you were there on top of No. 4 hatch? A. Yes, while I was standing there I saw another hose being played on the fire and that man must have been [640] standing behind a . forward of myself.

Q. When you say standing behind and forward, does that mean one hose or different hoses, or different men? A. I saw another hose being played on the fire. That man must have been standing behind and forward of me.

Q. Apart from hoses, was anything else used? A. Yes, later I saw fire extinguishers being used.

Q. Who was using them? A. An a.b.

Q. From that point on, Mr. Valen, will you tell us what occurred, did you stay there or leave or move, where did you go and what happened? A. I moved aft somewhat in order to save the drums of chemicals, but then it was getting too hot, wherefore I moved to the after part of the masthouse and continued extinguishing from there.

Q. Is that the masthouse direct after of No. 4 house you are talking about? A. Yes, but there is a space in between.

Q. In between what; what space is it? A. Between the No. 4 hatch and the mast house.

Q. Did you go yourself between the No. 4 hatch and the masthouse? A. I went in between the No. 4 and the drums of chemicals.

[641] Q. What did you do there at that place? A. I moved on top of the drums of chemicals but then it became too hot to stay there, therefore I moved abaft, between the masthouse and No. 5 hatch.

Q. Now, what occurred, what happened after that, Mr. Valen? A. Somebody shouted to me because it was burning in strakes between the drums of chemicals and the No. 4 hatch and therefore I moved forward again and tried to extinguish that.

Q. Proceed, if you will, and tell us what happened. A. It started to burn between my legs, therefore I jumped up on the stowage of naphthalene on the starboard side, then it was one or another that took over the hose from me and then I went out on the poop.

Q. Where in the poop did you go and what did you see? A. I went down to all of the rooms.

Q. What rooms? A. The crew's cabins.

Q. And what did you see there and what did you do there? A. I saw that they were not in the rooms.

Q. Did you yourself receive any burn or burns or [642] injury? A. Yes.

Q. Well, tell us what they were and where you were when you were burned. A. I was on the poop when I was burned.

Q. How were you burned? I mean, where, what part of your body? A. I was burned on fists or hands, head, face.

Q. Did you, while you were in the poop, see anybody else there? A. Yes.

Q. Whom did you see?

(The interpreter speaks with the witness.)

The Interpreter: He asked if you want the names.

Q. Yes, if you know the names. A. I saw A. B. Gundersen, ordinary seaman Karlsen, young man Wold, mess boy Verbeeck.

Q. Where did you see those men and what were they doing? A. I saw Verbeeck down in the alleyway near the main deck.

Q. And what were they doing? A. To me it looked as if they were on the way up.

Q. Did you have any conversation or do anything with Verbeeck, the messboy? A. Not at that moment.

[643] Q. Well, at any time, did you, during the fire? What happened with him? A. I saw him on the poop and we tried to get out a small boat on the port side but we couldn't, we didn't manage because it was too much smoke, and we ran all of us down towards the tunnel shaft alley, but on account of sparks and smoke which came from a ventilator located there, there were some of them that ran back again.

Q. Go ahead. A. Then I ran up on the poop in order to get a hold of that and there I met a repairman and a motorman and I told him that they had to go down through the tunnel, and at the same time I asked the repairman if there were any others out on deck and he answered that Verbeeck was out on the deck.

And when I then went in through the door on the starboard side into the poop house, I felt like something hitting my hands. It was then that I burned my hands.

Then I went out again and got a hold of Verbeeck and we both ran down towards the tunnel but he tore himself loose and ran up again and I fell and hit my head against the steel bulkhead.

[644] Then I ran up the ladder again but when I reached the main deck in the poop house I ran right into flame or fire and smoke and I fell down the ladder again, and after a little while I crept over towards the tunnel again and then I went through the tunnel and into amidships.

Q. When you got midships, what did you do and where did you go? A. I went up to the bridge and down the king-post located forward of the bridge.

Q. What happened then? A. And I can remember as I was standing on top of the naphthalene stow on the starboard side of the forward deck, and then I don't remember any more.

Q. You lost consciousness? A. Yes.

Q. And when and where did you next regain consciousness? A. The first time I remember anything since then was 5 o'clock the next afternoon on the Gripsholm.

Q. Were you in the sick bay on the Gripsholm? A. Yes.

Q. And where and when did you leave the Gripsholm? A. I left the Gripsholm at Goteborg, about [645] eight days later.

Q. And then where did you go? A. I was in the nospital at Goteborg.

Q. And did you return to Norway from the Goteborg Hospital? A. Yes.

Q. When, about when did you return to Norway? A. About August 10th.

Q. And what was your physical condition then when you returned to Norway? A. I wasn't quite well.

Q. Well, were you bandaged? A. I had bandages on my hand and on my head, right side.

Q. Did you at any time go before the Norwegian Government authorities and make a statement to them in a maritime declaration? A. Yes.

Q. Do you recall where that was and about when? A. It was about August 26th, the same year, at Oslo.

Q. Were you still then bandaged, as you stated that you were previously? A. My hands were bandaged.

Q. When did you recover physically yourself so that you were able to return to work? [646] A. About November 10th, the same year.

Mr. Pyne: I think that is all I have of the witness, your Honor.

The Court: It might be well to suspend for lunch now and be back at ten minutes past two.

Mr. Pyne: May I put just one question more, your Honor, which I neglected?

The Court: Yes.

By Mr. Pyne:

Q. Before making this statement to the Norwegian Government authorities, before that did you make any statement, oral or written, to anybody? A. No.

• • •

[647] *Cross-examination by Mr. Longley:*

• • •

Q. Mr Valen, you have told us that you were employed by Sigurd Harlofsen & Co.? A. Yes.

Q. And you were so employed while you were on the Black Gull in 1952, were you not? A. Yes.

[648] Q. Who engaged you, that is, what official of Sigurd Herlofsen? A. It was the man that is signing on crews—Mr. Hansen.

Q. What is his position with Sigurd Herlofsen & Co.? A. His job is to sign on the members of the crew.

Q. Did you know Captain Inge Svendsen? A. Yes.

Q. He was marine superintendent for Herlofsen, was he not?

Mr. Pyne: I request that a time for this be fixed, your Honor.

Mr. Longley: In 1952.

A. I assume so.

Q. Why do you assume so?

Mr. Pyne: I move, your Honor, to strike out what the witness assumes.

Mr. Longley: Well, I am going into it, why he is assuming it. What more do you want?

The Court: It is cross-exmination.

A. I have heard it.

Q. You have told us that you have served on three different vessels in the trade of the Black Diamond Line? A. Yes.

• • •

[649] Q. Do you know who owned these vessels? A. I know that they were handled by Sigurd Herlofsen & Co.

Q. That is all you know about it? [650] A. Yes.

Q. Between voyages of the various vessels on which you served, when you returned to Norway, did you report to the office of Sigurd Herlofsen & Co.? A. Yes, sometimes I did, sometimes I did not.

Q. You went into the office of Sigurd Herlofsen & Co. in Oslo, to whom did you report? A. Mr. Hansen.

Q. And did you also at that time report to Captain Svendsen? A. No.

Q. Hansen was Svendsen's assistant, was he not? A. I cannot say anything about that.

[651] Q. You told us that you had made 19 or 20 voyages between European ports and United States ports on Black Diamond vessels. A. Yes.

Q. Do you mean ten in one direction and ten in the other, about? A. 19 or 20 each way.

Q. Now, dealing with the westbound voyages, that is, from North European ports to United States ports, did I understand you to say that on each one of those voyages where you sailed there were carried a stow on deck of this napthalene? A. Yes, that is right.

Q. And in each one of these prior voyages on Black Diamond vessels the napthalene was stowed on deck at Antwerp and Rotterdam, was it? A. Yes.

Q. And in each case I understood you to say that it was stowed on deck as it was stowed the Black Gull on her last voyage? A. Yes.

Q. That is, it was stowed approximately 6 feet high, made fast by nets but without any cover other than the nets over the top or sides, is that correct? [652] A. That's right, except in regard to one voyage.

Q. Tell us about that one voyage. A. It was a voyage during the winter, a small part of the napthalene on deck, on the forward deck, was covered by tarpaulins in order that it shouldn't disappear—in order that it shouldn't become wet, and that tarpaulin was supplied by the shipper.

Q. Dealing with other voyages where no tarpaulins were carried, some 19 additional voyages, I take it from what you say, when these other vessels on these 19 voyages sailed from their last port of loading in Antwerp, their deck load of naphthalene in this case was completely uncovered except as there may have been rope slings? A. That's right.

Q. And the stow of napthalene in each of those cases remained uncovered from the time the ship sailed from her last port of loading until that napthalene was discharged at the port of discharge in the United States; is that so? A. Yes.

Q. What did you know, if anything, about the characteristics of napthalene? A. I know it is a kind of dangerous cargo.

[653] Q. Dangerous in what way? A. I don't know.

Nils Valen—For Petitioner—Cross

Q. Did you ever receive any warning from anyone about its dangers? A. I received orders not to smoke on deck.

Q. Who gave you those orders? A. The master.

Q. Did he tell you why you were not to smoke on deck? A. He said it was dangerous cargo.

Q. As third mate——

Mr. Longley: He was third mate, wasn't he?

The Interpreter: Yes.

Q. As third mate you had some supervision of the stowage of cargo on this vessel, did you not? A. No.

Q. You had nothing whatever to do with the stowage then? A. I had to see that it was stowed where it was supposed to be stowed and that it was stowed in such a way that the ship was seaworthy.

Q. Dealing with the various voyages on Black Diamond ships to which you have testified, did you see Captain Hollaar of Black Diamond on board those vessels? A. I never saw him on the voyages.

[654] Q. No, I didn't say that. When the vessels were in Antwerp and Rotterdam, did you not see Captain Hollaar on all these vessels while they were being stowed with naphthalene? A. Yes, several times.

Q. And he was on the Black Gull last before the start of the last voyage, was he not? A. I don't remember exactly.

Q. Now, as you had nothing to do with the stowage of the napthalene on the Black Gull on her last voyage, what occasion did you have to examine the stowage? A. I was doing cargo watches and doing that I had to see that the napthalene was stowed properly.

Q. Then you did have something to do with the supervision of the stowage of naphthalene? A. I couldn't make any decisions.

Q. Who did make the decisions as to where the napthalene was to be stowed and how? A. I received my orders from the chief officer on board.

Q. In any event, you know that on the after deck the napthalene was stowed, you tell us, six tiers high? A. Yes.

Q. And the stow extended from a fence along the [655] bulkwarks inboard to about three feet from the hatch coamings? A. Yes.

Q. That was the situation on the after deck at both port and starboard, was it not? A. Yes.

Q. Then there was a gangway or passageway about three feet in width extending along the hatch coaming, with the hatch coaming on one side and the stow of naphthalene on the other side; is that not right? A. Yes.

Q. And that passageway was the only way that the crew could go forward to their duties from their quarters in the poop, is that not correct? A. Yes.

Q. And the crew went back and forth through that passageway by watch, did they not? A. Yes.

Q. Throughout the 24 hours, day and night? A. Yes.

Q. Now, you have told us in answer to Mr. Pyne's questioning that there were various signs over the vessel in relation to smoking. A. Yes.

[656] Q. And you told us these signs were printed in English, did you not? A. Yes.

Q. All the members of the Black Gull, with one exception, were Norwegian, were they not? A. No.

Q. What others were there who were not Norwegian? A. There was one from the Faroe Islands.

Q. So there was a Scotchman from the Faroe Islands and a Belgian messboy? A. He wasn't a Scotchman; they were from the Faroe Islands.

Q. Well, he was not Norwegian? A. No.

Q. All the others, however, were Norwegian? A. Two Dutchmen.

Q. All right. You know some were not Norwegian. Is that all that you can think of that were not Norwegian? A. Yes.

Q. You yourself do not read English, do you? A. I read a little.

Q. The members of your crew in large part spoke only Norwegian, didn't they? A. All of them know a little English.

[657] Q. And the two Dutch citizens spoke Dutch and read Dutch, didn't they, if you know? A. They could speak English.

Q. In any event, I put before you Libelants' Exhibit 17 (handing to witness).

When Mr. Pyne examined you, you put some little red marks, which, I understood you, you said showed the location of various warnings against smoking is that correct? A. Yes.

[658] Q. Of all those marks you have put on that plan there are only two of them were at a position where any passenger could see them; isn't that correct? A. No.

Q. Where are the ones that the passengers would see? A. When the passengers came on board the first that they would see would be the signs at the gangway.

Q. You are pointing now to the ones amidships? A. Yes.

Q. That you have marked here, on port and starboard side. A. Yes.

Q. What other signs were there that could be seen by passengers on this vessel? A. "No admittance except for business."

Q. I am talking about warnings about smoking. A. It was painted here, it was painted there (indicating).

Q. Yes, you have told us that twice. I asked you whether there were any other signs or warnings about smoking that passengers could see on this vessel? A. They ought to be able to see these. They ought to be able to see these. And they ought to be able to see these two on the forecastle, and

they ought [659] to be able to see that on the masthouse, and maybe also the forward part of the poop.

Q. Did passengers walk on the main deck forward and aft? A. Not that I saw.

Q. Well, how could they see these signs then? A. They could see it from the lower bridge.

Q. They could see a sign there, and it is your opinion that from the lower bridge without a field glass or a spy-glass, they could read these signs; is that your point? A. Yes.

Q. You did not mix with the passengers yourself during the voyage, did you? A. No.

Q. You were not up on the deck where the passengers walked, were you? A. No.

* * *

Q. The picture, Petitioner's Exhibit O, you have told us was a picture of the port side of the Black Gull, or comparable to the port side of the Black Gull? A. No, I have never said that.

Q. What did you say, then? A. That picture is similar to the Black Gull.

[660] Q. Well, that is what I said. Comparable, I guess, threw you off, I used the wrong word. This is similar to the deck of the Black Gull on the port side, as I understand it? A. Yes.

Q. And as I understand, this is the port side (indicating)? A. Yes.

Q. To where do these windows lead? A. Towards the forward deck.

Q. Dealing now with the picture marked Petitioner's Exhibit Q, this is also on the port side looking aft, is it not? A. Yes.

Q. And that is the deck on which the passengers usually walked? A. Yes.

Nils Valen—For Petitioner—Cross

Q. Now at the end of this deck as appears in this picture marked Petitioner's Exhibit Q, you will find to the left a companionway, a staircase, will you not? A. Yes.

Q. To where did that ladder lead? A. It goes down to the boat deck.

Q. And then there was a ladder that led from the boat deck down to the main deck? A. Yes.

Q. This picture, Petitioner's Exhibit S, shows at the right, does it not, the stairway leading down [661] to the boat deck from—you call this the sun deck in Petitioner's Exhibit Q? A. That is not the sun deck. That is the deck of the lower bridge.

Q. Well, all right. This petitioner's Exhibit S shows the stairway coming down to the boat deck from the power bridge deck? A. Yes.

Q. And then showing at the after end of this picture there is an opening in the bulwarks? A. There is an opening.

Q. And that is where the companionway was from the boat deck down to the main deck? A. Yes.

Q. One standing in this opening here and looking down the stairs would look immediately on top of the stow of naphthalene on the port side of the after deck of the Black Gull; isn't that true? A. He won't see right down on it.

Q. Why not? A. Because the bags of naphthalene are stowed somewhat abaft the foot of the ladder.

Q. I see what you mean. The stow of naphthalene about six feet high started about three feet aft of the bottom of the ladder; isn't that so? A. Yes, about three feet. A little more.

[662] Q. During the course of the voyage of the Black Gull, what occasion, if any, did you have to examine the stow of naphthalene on the after deck? A. When I was on watch at sea I had my watch on the bridge, and it was my job to look both ahead and astern.

Q. The only examination you made of the stow of naphthalene on the after deck was looking toward the stow from

your position on that vessel's bridge; is that what we are to understand? A. I was not allowed to leave the bridge.

Q. Well, I guess you probably indirectly answered my question.

Mr. Longley: Put my question to him and ask him if that is not so, that during the whole voyage the only examination he made on the stow of naphthalene in the after deck was from his position on the bridge of the ship.

The Witness: (Through interpreter) That is right.

Q. As I understood you, in answer to one of Mr. Pyne's questions, you said that there were no crevices or openings between the bags. How did you know anything about it? A. I could see it, because I had cargo [663] boats both at Antwerp and at Rotterdam.

Q. But during the course of the voyage you have told us the only way you saw it was from the ship's bridge? A. Yes.

• • •

[665] Q. In any event, you had two levels in the poop where the crew lived? A. Really three because the boatswain and the carpenter was living up here in the house.

Q. Then I see up here in this plan a ventilator cowl up on deck, then a dotted line running down to the shaft tunnel. Is that the escape hatch? A. That hatch goes from this deck here and down into the shaft alley.

Q. Well, is that the one that we are talking about? A. Yes.

Q. Now, that is designed to permit the engineering staff to escape on deck in case there is a fire in the engine-room. Isn't that its purpose? A. I don't know that specially.

Q. Well, in any event there came a time that you could not go forward to where you were in the poop? A. Yes.

Q. And that was because there was a wall of flame from the naphthalene across the ship between you and amidships? A. Yes, on both sides.

Q. And then was the manhole cover off to the escape hatch or did you take it off? [666] A. I wasn't the first man going down there so I can't say.

Q. When you went there and looked down the hatchway, it was a round black hole, was it not? A. No.

Q. What lighted it up? A. There are lights in the shaft alley.

Q. Were the lights burning——

Mr. Pyne: If I am not unduly interrupting him, your Honor, I would like to direct your Honor's attention to this—it is the examiner who has been repeatedly calling this an escape hatch. The witness has never called it that.

Mr. Longley: That is what it is.

Mr. Pyne: It is a passageway.

Mr. Longley: It is a passageway, of course, but it is an escape hatch. What difference does it make what we call it—a hole, if you prefer.

Q. Were the lights still burning down below then? A. Yes.

Q. Did they burn down below the shaft alley when you eventually found you way forward? A. There was light in the shaft alley.

Q. You mean, I gathered from your testimony this [667] morning, you made two ineffectual efforts to go down that passageway and then you returned to the poop. Isn't that so? A. No, I haven't said so.

Q. Then I misunderstood you. I understood you to say that you went down past, partway, and came back again twice—that is wrong, is it? A. I didn't say that I went down into the shaft alley.

Q. No, I didn't say that either. I said you started down that ventilator to get to the shaft alley twice before you eventually went all the way, isn't that so?

Mr. Pyne: Pardon me again, your Honor, but let us call things by their proper name. The witness never said——

Mr. Longley: What do you want me to call it? I will call it anything you want.

Mr. Pyne: That is a passageway; it is neither a ventilator nor an escape hatch.

The Court: Suppose we stick to what the witness said.

Mr. Longley: Well, of course a manhole is only a hole——

Q. But this passageway was vertical, was it not? [668]
A. The manhole is at this floor here (indicating).

Q. Yes. A. And from the manhole there is a ladder going down to the shaft alley.

Q. And that is a vertical ladder inside the ventilator, is it not? A. There is no ventilator there.

Q. Well, inside of a round pipe there is a ladder that went down vertically? A. I can't remember that it was a round hole there.

Q. Wasn't the pipe you went down round to get from the lower deck of the poop down to the shaft alley? A. No.

Q. What was its shape? A. I will say that it was square.

Q. Anyway it was vertical. A. Yes.

Q. And what was the size of this square pipe? A. About 4 feet.

Q. About 4 feet square? A. About so (indicating).

The Interpreter: He says "about so," and he points about that (indicating).

Mr. Longley: About 4 feet square, yes.

• • •

[671] Q. You told us, in answer to one of Mr. Pyne's questions, that you never saw anyone smoking on any deck during the last voyage of the Black Gull. Do you remember that statement of yours?

• • •

[672] A. That's right.

Q. But you never were up on the deck where the passengers were, you told us, isn't that so? A. Yes, but I have been asked if I saw somebody and I said "no."

Q. That is fair enough. I never did either. Now, you smoke cigarettes yourself, do you not? A. Yes.

Q. And I think you told us that you smoked while on duty in the chart room and in the wheelhouse. A. Yes.

Q. The other officers of the ship smoked while they were on duty in the wheelhouse, in the chart room, did they not? A. I can't say anything about what they did on their watches.

Q. Well, what did you see with your own eyes when you were on the bridge deck? Didn't you see other [673] officers smoking? A. No.

Q. How about the seamen? Don't you know that they smoked while on this vessel?

(The interpreter speaks to the witness.)

Q. I said, that you know that they smoked while on this vessel. A. I know that they smoked, some of them.

Q. Where did they smoke? A. They were smoking aft in their smoking room.

Q. There was a smoking room in the poop, you mean? A. Yes.

Q. Was there a smoking room for the officers in the midship housing? A. Yes.

Q. And did the lookout smoke while he was on watch forward? A. No.

Q. What about the fellow that was standing at the wheel? A. No.

Nils Valen—For Petitioner—Cross

Q. Now, your ship made about 16½ knots, did it not? A. Yes.

Q. On the night of the fire you had a port breeze, did you not? A. Yes, a little on the port.

[674] Q. So anything thrown over the port side of your ship, by the very nature of things, would be carried aft and over to starboard, isn't that so? A. That is pretty hard to tell.

Q. Well, a breeze blowing from the port necessarily carries anything to starboard, doesn't it? A. Yes.

Q. And as you were going 16½ knots ahead, anything thrown over on the port side if going to be taken aft, isn't that so? A. Yes, it ought to, it should.

Q. Now, a little after 11 o'clock you were on the starboard wing of the bridge, you tell us. I am speaking now of 11 o'clock at night on January 18th. A. Yes.

Q. And you suddenly heard a dull boom, is that it? A. Yes.

Q. It sounded like a minor explosion? A. It didn't feel like anything.

Q. Oh, I don't mean it shook the vessel but you heard a boom like that, is that it? A. I didn't get that last.

Q. You heard a sound like a boom? A. I heard a bump sound.

[675] Q. What? A. Bump.

Q. A bump sound? A. Yes.

Q. And you were at the starboard and you looked aft, did you? A. Yes.

Q. And at that time you couldn't see flames from the starboard side, could you? A. I saw a small flame.

Q. And then from what you saw you knew it was on the portside of your ship? A. Yes.

Q. And so you went over on the port side of your ship, did you not? A. Yes.

Q. And then you went down, was it the sun deck you told us? A. Yes.

Nils Valen—For Petitioner—Cross

Q. And the sun deck, is that level with your upper bridge? A. At the same height as the lower bridge deck.

Q. And then you could look right down on top of the stow of naphthalene? A. I couldn't see directly down.

Q. Perhaps I don't understand the situation. Why not?

(Witness indicates on photograph.)

A. If I am standing right out there I can't see [676] directly down. I am looking at an angle.

Mr. Pyne: Pointing to the after end of the deck marked "S. D." on Petitioners' Exhibit R.

The Court: No, he was standing on the deck marked "S. D." and he was pointing to the after end of the ship.

Mr. Pyne: Pointing to the after end of the deck, that is where he pointed out.

The Court: That isn't as I understood him.

Q. Were you standing on this deck marked "S. D."? A. Yes.

Q. And you were standing at the after end of this deck? A. Where I was standing exactly I am not certain.

[677] Q. Well, in any event, the stow of naphthalene was right in front of you, wasn't it? A. It was several feet aft, towards the naphthalene.

Q. Yes, I know it was. You told us that the stow started about three feet aft of the bottom of the steps, and the steps may have been a slant that added another two or three feet, but from the after end of that sun deck there is only about six feet or so to the stow of naphthalene?

Mr. Pyne: I object to that. That is not what the witness said. He said that after deck is on a level with the lower bridge.

Mr. Longley: That has nothing to do with my question.

Mr. Pyne: And the witness has also said the boat deck and below the boat deck is the main deck.

Mr. Longley: I know that, but it has nothing to do with my question.

Mr. Pyne: Yes, it has everything to do with your question, because your question indicates to me something different from what the witness said.

The Court: It seems to me there was only one ladder in your question, Mr. Longley.

[678] Mr. Longley: I was dealing with the stow of naphthalene, your Honor.

Mr. Stonebridge: Your Honor, I think the witness may have been confused. When Mr. Longley says directly down, the witness thinks that is straight down.

The Court: I think that is so. Directly he interprets as vertically.

Q. As you stood where you did stand on the sun deck you could see the stow of naphthalene down below, couldn't you? A. Yes.

Q. Then did I understand you to say that you went below to the boat deck? A. No.

Mr. Longley: I may have mistaken that. Now may I have your drawing, Mr. Pyne?

(Mr. Pyne hands exhibit to counsel.)

Q. From the position where you were on the sun deck, as you looked aft at your stow of naphthalene, that is what you were seeing was it not? I am laying before you Petitioner's Exhibit P (indicating). A. This drawing here is made in order to elucidate what I saw from No. 4 hatch and not from the sun deck.

Q. Well, in any event, that is what you saw when you looked down on the top of the stow from the sun deck, isn't that true? [679] A. I saw a flame and smoke.

Q. And you saw that flame and smoke at the top of the stow of napthalene about where you have marked that in red?

The Court: About where he has marked it in red.

Mr. Longley: About where he has marked it in red. That is not where I marked it, but he has marked it. A. Yes.

• • •

[680] Q. Mr. Valen, just before the recess you may recall I was interrogating what you saw when you looked down from the sun deck and you told us that you saw flames at the top of the stew of naphthalene? A. Yes.

Q. And I asked you and you told that where you saw the flames was approximately the position marked in red on this Petitioner's Exhibit T? A. Yes.

Q. The position to which you have referred I have marked in Exhibit T with the word "fire" with an arrow pointing to that area. As you stood there——

• • •

Q. Now as you stood there at the after end of the sun deck all you could see was that fire on the top of the stow with black smoke, isn't that true? A. It was all that I observed at that time.

Q. Now how big an area, approximately, did this fire cover at that time? A. I can't answer that.

Q. I appreciate you can't give it to us in [681] inches but was there an area two or three feet across or was it just a few inches across? A. It is impossible to say how much it was because I only saw a little flame and then I ran back again immediately.

Q. And it was about in the position you marked on Exhibit T, I think you told us, approximately midway between the bulwarks and the edge of this stow, three feet inboard — I should say outboard from the hatch coaming? A. Yes, it is about at the place.

Q. And I think you said it was somewhat forward than midway of the No. 4 hatch, in a fore and aft direction? A. Yes, a little forward aft than the middle of the hatch.

Q. And then you ran to tell the master of the fire? A. Yes.

Q. And you found him in the passageway? A. Yes.

Q. And then you went back to the bridge and gave the wheelsman the orders to turn the wheel to port? A. Yes.

Q. What was the purpose of that maneuver? A. In order that we could get the wind in a [682] littie on the starboard, in order that we could get the wind in abrast on the starboard side.

Q. So that the flames would be carried toward the outside of the ship to port? A. Yes.

Q. Then you had a fairly strong wind from port, did you? A. No.

Q. Then what was the purpose of turning the ship at all if it was merely a light wind? A. It was in order to get the wind in from the starboard side.

Q. Whatever wind was there. A. Yes.

Q. Then having turned the ship, already having given the information to the master, you went aft to No. 4, did you? A. Yes, when the captain had taken over the command I went down.

Q. You went down on the starboard side to go aft? A. I went down on the port side.

Q. And then you got up on the No. 4 hatch? A. Yes.

Q. As you stood on No. 4 hatch, the stow of naphthalene was a foot or two higher than the top of the hatchway, was it not? A. About two feet.

Q. And as you looked toward the stow the first [683] thing you saw was still the flames and the smoke coming up from the top of the stow at the position you had seen when you were on the sun deck, isn't that so? A. Yes, I saw flame and smoke.

Q. Now prior to the time when you heard the sound that called your attention to something aft, when was the last time that you had seen the stow of naphthalene on the port side? A. I saw both forward and aft when I was walking up and back, to and from, on the bridge.

Q. When did you last look aft at the port stow of the naphthalene before you knew there was a fire? A. I cannot say. It couldn't be long.

Q. When you looked aft, you were looking primarily to see if there was any ship coming astern, weren't you? A. When I am crossing the bridge like that my eyes are wandering everywhere.

Q. Let's see. Ten-thirty or so it is dark, isn't it? A. Yes.

Q. Was this a moonlight night or was it a dark night? A. I can't answer.

Q. You don't remember, you mean? A. I don't remember.

Q. In any event, it was so dark you couldn't [684] see any smoke before there was any flame, isn't that true? A. In many places on the deck I would have seen the smoke anyhow.

Q. But you wouldn't have seen something from this area, would you? A. I can't say for sure but I believe I would have.

Q. In any event, having done what you have mentioned, you went aft and you picked up the hose after the engineers had given you pressure, isn't that true? A. Yes.

Q. And then you planned to jump up on top of the stow of naphthalene and use the water from the hose on the area of flame which you had already seen at the point marked "fire" on Exhibit T? A. Yes, I wanted to try to extinguish the fire.

Q. And then you found you couldn't get up on top of the stow because the flame was working toward you, isn't that correct? A. Yes, I could get up.

Q. Why didn't you? A. Because it was burning out from the side of the stow.

Q. Now you are referring, I take it, to this point that you have marked in red on the side of the stow on Exhibit T? A. Yes.

Mr. Longley: Now let us see how I will mark [685] that. How do you want me to mark that, Mr. Pyne?

Mr. Pyne: Anyway you want is all right with me.

Mr. Longley: Well, I will call this "fire(2)" (marking).

Q. Now do I understand that that was the first time you saw any fire at that point which I have marked "fire (2)"? A. Yes, I didn't see that before I got down on No. 4 hatch.

Q. And there was no fire coming between the first tier and the second tier? A. There was no fire between the first and second tier.

Q. But you saw fire or was it just smoke between the second tier and the third tier? A. That was fire.

Q. And smoke, too? A. At that time there was smoke all over.

Q. At that time there was no fire between that aperture, between the second tier and the third tier and the top of the stow? A. It wasn't fire above. There was no fire on the uppermost bags.

Q. No fire on what?

[686] (Record read.)

Q. Now on that drawing—by the way, you made that drawing yourself, did you not? A. Yes.

Mr. Longley: Referring to Exhibit T.

Q. These oblongs in this drawing are designed to represent bags of naphthalene, are they not? A. Yes.

Q. And at the corners where the bags come together I see you have left a space? A. It isn't supposed to be an open space, and it doesn't mean that.

Q. In fact, in your drawing you have left little spaces at the corners where four bags came together, haven't you? A. Yes, but that is only to point out the corners.

[687] Q. Do you know just how inflammable this cargo was? A. No.

Q. You don't know that these burlap bags impregnated with naphthalene burn very quickly? A. No.

Q. I perhaps misunderstood you, but is it your view of what you saw that you thought that a fire had started out toward the center of the stow two tiers down, and then worked its way to the point where you say you saw it next to the passageway outboard of No. 4 hatch? A. I never said anything like it.

Q. I am asking you now. A. I have no opinion in regard to it. I only saw the flame there. I saw it was burning there.

Q. In answer to Mr. Pyne's question you commented that you gave your testimony before a body, or an investigating body, at Oslo? A. That is right.

Q. At that time you said nothing whatever, did you, about seeing any fire between the second and third tiers that you now mention? A. Yes, I did.

Q. You did?

Mr. Longley: Let us have his testimony. I better have the Norwegian, because I have the English.

[688] Well, I tell you, instead of looking for it I will go on——

Mr. Pyne: I have it here. We will have it in a minute.

Mr. Longley: Well, it speaks for itself, Mr. Pyne.

Mr. Pyne: Here it is (handing to counsel).

Nils Valen—For Petitioner—Cross

Q. Will you look through this transcript of your testimony at Oslo in Norwegian and let us have what you mean (handing to witness).

Mr. Longley: It is my impression this is what he was talking about (indicating).

The Interpreter: Yes, that is right.

Mr. Longley: The witness points to this paragraph in Norwegian, and this is an agreed translation, is it not, Mr. Pyne?

Mr. Pyne: Yes, that is right.

Mr. Longley: The paragraph to which the witness points reads as follows, at page 5 of my copy:

"It was my impression that it was not actually burning at the top but in the middle of the pile of naphthalene bags on the port side of hatch No. 4. The ship had been listed to port, so naturally it burned towards the ship's side, but I also had [689] the impression it burned toward myself where I stood on hatch No. 4, trying to extinguish."

Is that a fair statement?

The Interpreter: Yes.

Q. Is that what you had in mind? A. Yes. Well, ——

Q. Is there anything else in here that you know of that deals with this? A. (Witness indicates.)

The Interpreter: "I didn't direct the hose towards the top but about towards the middle of the naphthalene pile."

Mr. Longley: Yes, I see that. That is all, thank you.

Mr. Abberley: No questions.

Nils Valen—For Petitioner—Re-direct

Re-direct examination by Mr. Pyne:

Q. Mr. Valen, on your direct examination you told us that your living quarters, your cabin, was in the midship house on the main deck. Is that correct? A. Yes.

Q. Where did you take your meals? A. In the officers' messroom on the main deck.

Q. And how did you get back and forth between the main deck, your quarters, and the navigation bridge? [690] A. I had to go up the ladder from the main deck to the boat deck, from the boat deck to the lower bridge, and the lower bridge to the bridge.

Q. Then did you go back and forth over that route to get to the navigation bridge every time you went on watch and to leave it? A. Yes.

Q. And did that take you over the boat deck and the lower bridge where the passengers' quarters were located? A. Yes.

Q. You were asked whether you examined the naphthalene stow during the course of the voyage? I ask you did you see it, did you see the naphthalene stowage during the voyage? A. I saw it when I had a watch on the bridge, and I saw it when I went to and from the bridge.

Q. How did its appearance to you look on those occasions, from its appearance when the vessel left Rotterdam? A. It was all right.

Q. Was there any difference in the appearance? A. No.

Q. You have been asked about markings on Petitioners' Exhibit T, this diagram you prepared, and you stated something with respect to the corners of the bags. Were there any openings at the corners of the bags or any [690a] where else, on top or sides? A. No.

• • •

Deposition of Jan P. Muller

[692] • • • Jan P. Muller. His deposition was taken here in New York, your Honor, on November 3, 1954.

• • •

"Q. Mr. Muller, where is your permanent residence? A. Bad Pyrmont, Germany.

[693] "Q. You are temporarily in the United States, are you, Mr. Muller? A. That's right.

"Q. You are here in the United States on business? A. That's right.

"Q. Are you engaged in the tobacco business? A. Yes.

"Q. Do you expect to leave the City of New York in the near future? A. Oh, yes.

"Q. When do you expect to leave? A. Tonight.

"Q. And where are you going? A. I am going to North Carolina.

"Q. Back to North Carolina? A. Yes.

"Q. You came up here from North Carolina at the request made to you by this office through another attorney in North Carolina, for the purpose of giving your testimony here? A. That's right.

"Q. Now, in July 1952 were you on board the Steamship Black Gull on a voyage between Europe and the United States, on which a fire occurred on that [694] vessel? A. Yes.

"Q. Where did you board the vessel? A. In Rotterdam.

"Q. And for what purpose, or in what capacity, or why did you board her? A. Oh, just as a passenger.

"Q. Now, do you recall what stateroom or living room or quarters you occupied in the vessel? A. You mean the number?

"Q. The number of—— A. No.

"Q. Do you know where its location was? A. Oh, yes, it was—I don't know how to describe it. When you look out of the porthole you could see the front part of the ship.

It must have been right under the captain's bridge.

"Q. Was there a ticket issued to you for that trip? A. Yes.

"Q. Can you describe the ticket in any way? What kind or type it was? A. Well, it was a big sheet of paper just like that (indicating), written on both sides.

"Q. I show you this piece of paper which has been [695] marked Petitioner's Exhibit 3 for Indent. under date of August 24, 1954."

And here, if I may digress, your Honor, to state that that was the same form that was marked on the Leeson deposition and now in evidence as an exhibit here.

(Mr. Pyne continues reading:)

"Is that the piece of paper that you just identified? A. Yes.

"Q. And to the best of your recollection how does that form or piece of paper compare with the ticket which was issued to you? A. Well, I think it's the same. I mean that paper looked just like this one.

"Q. Now, while you were aboard that vessel, and prior to the time that the fire occurred, did you see or receive any request or suggestion or instructions in connection with smoking? A. Yes.

"Q. Now, what type of data or matter was it that you saw or received? A. Well, I remember a sign that was in my cabin, and which says something about smoking.

[696] "Q. Now where in your cabin was the sign? A. I believe it was right on the wall over the table, a small table.

"Q. Can you recall what the content—or what was said on the sign, the substance? A. It said in the sense of 'Don't throw cigarettes or butts or burning cigarettes away, or overboard.'"

That is all of the direct, your Honor.

• • •

Deposition of Harold Farstad

[697] * * * Deposition taken at Antwerp, on August 4, 1955, of Harold Farstad. He was the steward on the Black Gull * * * direct examination:

"Q. Mr. Farstad, where do you reside? A. In Antwerp.

"Q. You are a permanent resident here of Antwerp? A. I live here permanently.

"Q. And you and your family live here together? A. Yes.

"Q. Were you formerly a member of the crew of the vessel called Black Gull? A. Yes, I was steward.

"Q. When approximately as best you can remember by month and year did you first join the Black Gull? A. On the 4th of October, 1950.

"Q. And you joined her at that time as steward? A. Yes.

"Q. When did you leave the vessel? A. After the vessel had been on fire.

"Q. When as nearly as you can remember was the fire? A. On the 18th of July 1952.

"Q. And the vessel was at sea at that time? A. Yes, about 8 hours away from New York.

[698] "Q. Before you joined the Black Gull did you serve on any other Black Diamond vessel? A. No.

"Q. How many total years about in every capacity on any and all vessels did you go to sea? A. About 12 to 13 years.

"Q. And was that entirely in the steward departments? A. Yes always.

"Q. After you left the Black Gull did you serve on any other Black Diamond vessel and if so on what vessel? A. I went straight on board the Black Falcon from the Black Gull.

"Q. And how long approximately did you serve on the Black Falcon? A. About 18 to 19 months.

"Q. Since that time, since you left the Black Falcon have you gone to sea? A. No.

"Q. Are you at the present time in any way connected with or employed by Skibs Jolund of Oslo or Sigurd Herlofsen & Co., Oslo? A. I have no connections with them.

"Q. What is your present occupation? [699] A. I keep a cafe.

"Q. Do you recall from what port the Black Gull sailed, what port she left on the voyage on which the fire occurred when you mentioned? A. The last port was Rotterdam.

"Q. As steward on that vessel, what were your duties? A. I had to do with the look-out for the provisions, I had to do with the passengers and anything connected with the restaurant.

"Q. Do you recall how many passengers there were on the Black Gull on that voyage? A. As far as I remember we were full up, 10 passengers.

"Q. Do you remember the name or names of any of the passengers? A. I can't say for certain, but I remember a couple, an American couple, he was American and she was Belgian, I believe Mr. and Mrs. Leeson.

"Q. Mr. and Mrs. Leeson? A. Yes, Mr. and Mrs. Leeson.

"Q. Do you know where they reside at the present time? A. I cannot say, but I think they live in Antwerp.

[700] "Q. Do you know whether or not the passenger or passengers had any ticket or tickets? A. Every one of them.

"Q. Did you have anything to do or did you do yourself anything about or with the passengers' tickets? A. It was I who collected the tickets on arrival.

"Q. Can you tell us whether or not there was a place or a part on the ticket and on all of them for the passengers' signature? A. Yes on all the tickets the passengers had to sign.

"Q. Can you tell us whether or not each and every one of the passengers did or did not sign the tickets? A. All tickets had to be signed before I sent them in to the master.

Deposition of Harold Farstad

"Q. Were all the tickets signed? A. There were two tickets which were not signed and I had to get them signed by Mr. and Mrs. Leeson before I handed them to the Master. There was only one ticket for the two of them and they both had to sign on the one ticket.

"Q. In answer to a previous question, you said something about tickets on arrival. Will you tell us what you meant by tickets on arrival. On arrival where? [701] A. Before arrival means on arrival either in Europe or in the first port of America. It would mean Rotterdam going this way, New York the other.

"Q. You have spoken of collecting tickets from the passengers. Did you on this voyage collect from each and every passenger a ticket? A. All of them.

Q. Did you collect them before the date of the fire? A. Yes, before the fire.

"Q. Do you remember when or how long before the fire or how long after they came on board you collected the tickets? A. It would probably be on the day after we left Rotterdam.

"Q. What did you do with the tickets after you collected them? A. When I had collected them all I gave them upstairs to the Master of the ship.

"Q. If I understand your answers correctly you collected all the tickets for all of the passengers, is that right? A. Yes.

"Q. If I understand you correctly, when you first picked up the tickets they were all signed except one [702] ticket which covered two passengers; is that correct? A. No, one more ticket. There were two tickets: one for one person, one for two persons.

"Q. What did you do, if anything, in connection with those tickets which were not signed when you first picked them up? A. I asked the persons in question to sign on the tickets.

Deposition of Harold Farstad

"Q. Then is this the situation that when you delivered all of the tickets to the Master, all of the passengers had signed their ticket or tickets? A. Yes.

"Q. Are you familiar with the condition of the passengers' state rooms and the arrangements, furniture and what was in them? A. Yes.

"Q. In the passengers' staterooms was there any sign or signs or notice of any kind and if so what were they? A. We had two notices in each cabin. There was one that it was not allowed for passengers to smoke on deck and one stating that they were not allowed to throw cigarette and through the portholes.

"Q. Was there anything stated as to whether or not [703] the cigar or cigarette ends should be thrown or should not be thrown overboard or anything to that effect? A. It was stated that it was not allowed to throw overboard cigarette ends, cigar ends or other burning articles.

"Q. Do you from your own memory recall the exact wording of either of those signs which you say were in the passengers' cabins? A. Not quite word by word.

"Q. So what you have given us is your best recollection of the substance of at least some of the statements on the signs? A. Yes.

"Q. Elsewhere on the Black Gull, that is outside or apart from the passengers' cabins, were there any other sign or signs on the vessel and if so where were they and what did they say? A. In all the alleyways there was a notice, No Smoking. In front of the gangway when you came on the ship there was a notice No Smoking. On all the masthouses there were also notices that read No Smoking."

• • •

[704] "Q. You have mentioned that you collected one ticket which you caused to be signed by two passengers. Do you remember the name or names of those two passengers? A. Mr. and Mrs. Leeson on the one ticket."

• • •

"Q. Mr. Farstad, in the steward's department on the Black Gull on this trip, were there any stewardesses (women)? A. Yes, two.

"Q. Do you remember their names? A. No, I cannot remember.

"Q. What were their duties, what work did they do? A. They were cleaning the passengers' cabins, the saloon, the chief officer's cabin, the Captain's cabin and the chief engineer's cabin.

"Q. In the steward department on this vessel on this voyage was there any cook or cooks? A. We had one chief cook, one second cook and one galley boy.

"Q. You remember their names, perhaps? [705] A. The second cook was Asbjorn Jensen.

"Q. Do you remember the name of the other cook? A. I cannot remember the other cook's name because it was only his second voyage.

"Q. Do you remember the galley boy's name? A. No.

"Q. In addition to those five already mentioned, the two stewardesses, the two cooks and the galley boy, in addition to them were there any other in the crew in the steward's department? A. We had one girl for the Officers, one for the Petty Officers and one mess boy aft for the crew.

"Q. If my recollection is right, this names three more besides the five. A. There were three more."

• • •

[706] GUSTAVE OLSON, called as a witness on behalf of the Petitioner, having been first duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Olson, you are chief engineer of vessels? A. Yes.

Q. Do you hold any license? A. Yes.

Q. What license do you hold and how long have you held it? A. I have had third class since 1936.

Q. Is that a Norwegian engineer's license? A. Yes.

Q. How long have you been going to sea in total number of years? A. About 30 years.

Q. What vessel are you now serving on? [707] A. The Black Hawk.

Q. You were formerly chief engineer of the Black Gull? A. Yes.

Q. When did you join the Black Gull as chief engineer? A. I was sent down to Lanskrooner to supervise the building.

Q. And from the time the vessel was built down to the time of the fire were you chief engineer of the vessel? A. Yes.

Q. And before going on the Black Gull did you serve on any other vessel which was in the Black Diamond Steamship Corporation business or trade? A. No.

Q. Since you left the Black Gull have you continued on vessels in the Black Diamond Steamship Corporation service? A. Yes.

Q. On the evening of July 18, 1952, on the Black Gull did you go to the engine room of that vessel? A. Yes.

Q. What time did you go to the engine room? A. At 20 o'clock.

Q. That is 8 o'clock p.m.? A. Yes.

[708] Q. Did you remain there? A. Yes.

Q. Who else was in the engine room during that time from 8 o'clock on; who was the officer on watch? A. It was my assistant motorman.

Q. Who was actually the engineer officer on watch from 8 to midnight? A. I.

Q. On the voyage out of Rotterdam were the engines during the voyage at any time before July 18th stopped? A. Yes, we had three stops on the 14th.

Q. Do you know when, about what time they were topped and for how long? A. It was from 1320 to 1350, I think it was a little past 17 and a little past 19.

Q. For how long on those occasions? A. The first one was about half an hour: the second was about five minutes and the third about eight minutes.

Q. What was the reason for those three stops? A. We had fuel oil valves on engine No. 7 which did not work satisfactorily.

Q. What did you do about it? A. We changed them.

Q. How many cylinders did the Black Gull's engines have? A. Nine.

[709] Q. When you say you changed the valve, was it one valve or more than one valve changed? A. There were two valves on each cylinder.

Q. Well, I am speaking of the number that were changed, how many were changed? A. Two.

Q. Are spare valves or were spare valves carried on the Black Gull? A. Yes.

Q. Is it usual on the vessels on which you serve for them always to carry spare valves? A. Yes.

Q. Will you tell us as to the work of changing and the reason for changing a valve—whether it is a major repair item or a minor repair item? A. It is small work and we shifted them on the top of the cylinders were smoking.

Q. Except for that valve trouble on one occasion on July 14th, was there any other trouble or difficulty with the engines or any of the equipment in the engine room? A. No.

Q. Now, what was the condition of the engines and all of the equipment and appurtenances in the engine room on the Black Gull on this voyage? [710] A. Everything was in good condition.

Q. Will you tell us whether or not on the Black Gull on this voyage out of Rotterdam you saw any sign or signs anywhere on the vessel relating to smoking?

(The interpreter speaks with the witness.)

The Interpreter: Do you mean smoking of the engine or ordinary smoking?

Q. Smoking by crew or the passengers, that is what I am talking about, not smoking of the engines. A. Yes, I saw them smoking indoors.

Q. Now, I am asking you

Mr. Pyne: Would you mind reading the question?

Mr. Rein says there is some trouble with the translation. Maybe I had better ask the question again.

(Question read)

(The interpreter speaks with the witness.)

The Interpreter: I wonder whether you mean

Mr. Pyne: Let me ask the question again. Apparently there is trouble with the translation.

Q. On the Black Gull on this voyage was there any notice or any sign which said anything about smoking? A. Yes, we had painted in the engine room and [711] several places "Smoking Forbidden."

Q. Did you keep a log book in the engine room on the Black Gull? A. Yes, we had two log books, one for the ordinary handling of the engine and another one for maneuvering.

Q. What became of those books? A. They were lost during the fire.

Q. Now, you say you were in the engine room on the night of July 18, 1952. Will you tell us whether or not while you were in the engine room you received any order or orders? A. About 11 o'clock at night we suddenly received three orders.

Q. Well, what were those orders? A. Through the telephone we received orders to send water on deck on account of fire. Then it was "Stand By."

Mr. Pyne: "On the telegraph" he said.

The Interpreter: "On the telegraph," he said.

A. (Continuing) And at the same time the fire signal was given.

Q. Now, what were the engines of the Black Gull doing prior to those orders? [712] A. They had been running full speed since we changed our valves on the 14th.

Q. And after those orders were received in the engine room, what was done then? A. We immediately sent water on to the deck.

Q. How did you do that? A. By starting water on to the deck pump and the discharging pump which also could be used for water on deck.

Q. Now, did you receive any other order or orders and, if so, what? A. When they rang "Stand By," we merely answered that, and soon thereupon they rang "Slow Speed."

Q. Did you comply with the slow speed order? A. Yes.

Q. Were there any other or further orders, and, if so, what? A. A couple of minutes after we received the first order, we also received an order both from the bridge and also from the deck to put more force on the water.

Q. Before you got that order for more force on the water, what was the force of the water? A. We had a gauge there that showed 4 kilograms and I tested that by a trial valve, test valve.

[713] Q. Well, was that 4 kilograms you mentioned, is it or is it not full pressure? A. Yes.

Q. Now, how soon after you gave that pressure on that water on the deck did you get an order or request for more pressure or more pressure? A. About two minutes.

Q. And what did you do then? A. I started the ballast pump which also could be used for water on deck.

Q. Now, did you receive any order or request with respect to the vessel's tanks, whether ballast tanks or fuel tanks? A. I got orders from the bridge to pump out starboard cargo oil tank No. 1.

Mr. Pyne: I did not hear that.

(Answer read.)

Q. Any other order? A. And to trim the oil from starboard to port bottom tank No. 4.

Q. Were those orders complied with? A. Yes, immediately.

Q. You have told us that engines were put on slow ahead? A. Yes.

[714] Q. Were there any other or further orders for changes in engine speed? A. Yes, it was dead slow and stop.

Q. Could you recall or do you remember the sequence of any of those orders, how often they came or how many changes? A. No.

Q. Let me ask you, Mr. Olson, with respect to electrical equipment or electrical wires, was there any electrical wiring or electrical equipment anywhere aft of the midship-house on the Black Gull? A. Yes, there were electric wiring in cables from the cable of the engine room aft running underneath the shelter deck.

Q. Running where? A. Underneath the shelter deck.

[715] Q. Well, then, what part of the shelter deck; where on the vessel? A. On the port side.

Q. When you use the term "shelter deck," is that the same as what is called the tweendecks? A. It is the same as you here call it the weather deck.

Q. Where with respect to the main deck where the cargo was stowed were these wires that you speak of? A. That

is underneath the deck on which the naphthalene was stowed.

Q. On which side of the vessel, port or starboard? A. Port side.

Q. Will you proceed and tell us what conditions developed, what happened in the engine room on this right, after you were receiving the orders for changes in speed that you have mentioned? A. When we had been running for about an hour's time, one of the steering engines stopped.

Q. Did you do anything about that? A. Yes, we started the other one. The steering engine has two aggregates, and we started the other. The steering engine has two pumps and two motors. One had stopped and we started the other, and the same was running for about fifteen minutes when this one also [716] stopped. It started to get so much smoke in the engine room that it was difficult to see, and it felt just like tear gas.

Mr. Longley: I did not understand when all this occurred. After the fire?

Mr. Pyne: I beg your pardon?

Mr. Longley: When did this first steering engine break down, after the fire started?

Mr. Pyne: I think he said an hour or an hour and a quarter after the fire started.

Mr. Longley: Thank you.

Mr. Pyne: I will ask it in any event.

Q. When did you say that the first steering engine stopped—when with respect to the time of the first fire signal? A. About an hour afterwards.

Q. Do you know what caused the stoppage of that steering engine? A. I think that the cables which passed underneath the deck where the fire was, were burned up.

Q. Where did those cables pass, underneath what deck, or what part of what deck? A. If I could have the plan of the ship.

The Court: Was the steering engine operated [717] by electricity?

The Witness (in English): Yes, sir.

Mr. Pyne: Did your Honor want to ask the witness a question or questions?

The Court: I did, and got the answer.

Mr. Pyne: I did not hear it.

The Court: I asked him whether the steering engine was operated by electricity and he immediately answered yes.

Q. You have asked for the plan, so I show you Libelants' Exhibit 16 (handing to witness). A. Here was the table in the engine room, and the cables went up from that table underneath the shelter deck. I place them at about the middle of the deck from the hatch to the ship's side. And all the way aft to the motors for the steering engine, which are located at the lower floor in the poop.

Mr. Pyne: At the place where the witness has marked a cross.

The Witness: Here is the rudder (indicating).

Q. With a line drawn in pencil down to the rudder, and a line over the top of that pencil to make a T-shape indication? A. Yes.

Q. You have pointed out on that vessel a place [718] which has been stated to be about halfway between the side of the ship and the hatch. Which side of the ship is that on? A. The port side.

The Court: Was there a separate cable to each of the motors in the steering machine?

The Witness: Yes.

Q. You have mentioned, Mr. Olson, that when or after you started the second steering engine that the second engine also stopped? A. Yes.

Q. About how long was it between the starting and the stopping of that engine? A. About a quarter of an hour.

Q. You have mentioned that smoke came into the engine room which was like tear gas? A. Yes.

Q. Was anything done in the engine room or by the engine room force at that time? A. Do you mean as to the smoke?

Q. What did you do, if anything, about the smoke? A. We couldn't do anything. It was coming from the shaft alley.

Q. May I ask whether after the fire alrm was first sounded anybody else came to the engine room besides [719] those you have already mentioned as being there during the watch? A. Yes, the second engineer was called down.

Q. Did the smoke get bad in the engine room? Describe it. A. The smoke became so bad down there that it was difficult to see and difficult to breathe, so I asked the second engineer to get the motor and take the motor man along and go aft on deck; and I also asked him to advise the captain that we had to leave the engine room as it was practically impossible to breathe down there.

Q. Did you after that or at any time receive any further order from the bridge? A. At that time the engines were stopped, but they rang three bills that they were finished with the engine.

Q. Who rang that finished with the engines; where did that signal come from? A. It was rung on the telegraph.

Q. What occurred then; what happened then? A. Then my assistants and myself went up from the engine room. But before we went up we stopped the transfer pump which was pumping oil from starboard to port, from the bottom tank.

[719a] Q. When you left the engine room then the engines were stopped, and also the pumps that were pumping oil to the engines: is that correct? A. Yes.

Gustave Olson—For Petitioner—Cross

[720] Q. What was the condition of the pumps or water for the fire hoses or water on deck when you left the engine room? A. There were three pumps giving water to the deck at the time that we went up and we let them go and we let also the pump pumping water from the ballast tank run—go.

(The interpreter speaks with the witness.)

A. (Continuing) From the cargo oil tank No. 1.

Q. When you say you let these water pumps go, what do you mean by that? Were they continuing pumping water or not? A. They continued pumping water.

Q. About how long was it after you got the first fire alarm signal until you abandoned or left the engine room? A. About an hour and a half.

Q. What did you and the other engine room crew then do? A. We continued helping with extinguishing the fire on the deck.

Q. And after you got to the deck, how long, about, did you continue helping fighting the fire on deck before you left the ship entirely in the lifeboat? [721] A. About two hours.

* * *

Cross-examination by Mr. Longley:

Q. Chief, up to the time of the fire there was no trouble whatever with the steering engines, was there? A. No.

Q. The steering engines were on the poop or in the poop? A. Yes.

Q. And the power reached the steering engines by way of the electrical conduit which you have described as running through the shelter deck on the port side, isn't that so? A. Yes.

Q. When you left the engine room, Chief, you have told us that you left your pumps still operating. A. Yes.

Q. Hadn't you stopped your auxiliaries then when you left the engine room? A. No, two auxiliary motors were running.

Q. And what about your electric lights in the engine room, were they operating when you left? A. Yes, there was full light in the engine room when we left.

[722] Q. And you left because you found that the engine room was unlivable because of smoke, is that correct? A. Yes.

Q. And that smoke was reaching the engine room by way of the shaft alley? A. Yes, and also from the skylight.

Q. Before you left the engine room, did you see the third man Valen? A. No.

Q. There is testimony here that Valen came down the escape hatch to the shaft alley and then through that to the engine room after the fire. You did not see him come into the engine room? A. We were working on the starboard side of the engine room and Valen could have come on the port side without us seeing him.

Q. Chief, it is true, is it not, that sparks do come from the funnel of a diesel-powered ship at times? A. Yes, that's right.

Q. You had no spark arresters over your funnel, did you? A. No, I haven't seen that on any ship.

Q. You knew, did you not, Chief, that when you [723] received the order to pump out one of the tanks to lift the ship after the fire broke out, that that was to permit the burning flaming naphthalene to flow off of the deck? A. Yes.

* * * *

Cross-examination by Mr. Stonebridge:

Q. Chief, you, in answer to a question put by Mr. Pyne, testified that there were signs prohibiting smoking in the engine room.

Did you see any other signs, the same or similar, anywhere else on the vessel? A. Yes, there were on the deck painted at various places on the deck.

Q. Do you recall where they were painted? A. Yes, they were painted here (indicating), in various places immediately when we got up the gangway, on both sides here (indicating), and also on the bulkhead after part forecastle head; also fore and aft on the masthouses, on the forward part of the midshiphouse and also at the after part, and at the forward and after part of the after masthouse, and [724] at the forward part of the poop.

Q. Chief, looking at the ship's plans before you, could you tell us where on deck you had hose connections or stand pipes to take your firehoses? A. We had a connection here (indicating) at the break of the forecastle head, and one abreast of the foremost masthouse and another abreast of the forward part of the second masthouse, and one at the break of the forward part of the midshiphouse, one at the break of the after part of the midshiphouse, one at the after part of No. 4 hatch and another at the forward part of No. 5 hatch, and one at the break of the poop—all on the starboard side.

There are more. Then two on the boat deck, one on each side, and one on each side at the lower bridge.

Q. Thank you, Chief. Now, one more question: How many men were there in the engine room department on the Black Gull? A. Fifteen.

Q. You mentioned approximately five who were in the engine room during the fire. Do you know what the others were doing? A. There were four in the engine room during the [725] fire.

Q. Including yourself? A. Yes.

Q. Where were the other members of the engine room department? A. I was in the engine room; therefore, I can't exactly tell where they were but I think they were in their rooms.

• • •

The Court: Are there any hose connections on the port side of the ship?

The Witness: Yes, on the boat deck and lower bridge.

The Court: But not on the main deck?

The Witness: No.

Mr. Stonebridge: I did not quite get that question. I believe the witness has marked on the main deck the location.

The Court: But all on the starboard side.

Mr. Stonebridge: That is correct.

Cross-examination by Mr. Longley:

Q. Chief, where on the starboard side in relation to the stow of naphthalene were these outlets or valves? A. The connections were at the side of the ship [726] and around same had been built a latticework of dunnage in order that it could be gotten to.

Q. How far above the deck were the valves—10 inches? A. About a foot.

Q. And the stow of naphthalene was about 6 feet high, was it not? A. Yes.

Q. And the stow of naphthalene was against what has been called here a fence inboard of the bulwarks? A. Yes.

Q. And these valves were between the bulwarks and this fence holding the naphthalene? A. Yes.

Q. Well, how would anyone get to these valves to make a connection with the hoses? A. It was good room for a man to get down to the latticework, to the valve, and connect them up.

Q. You have made a little drawing here from which I gather that in the way of the valves the fence holding the stow was built inboard. A. Yes.

Q. Then to connect up the hose a man would have to walk across the stow of naphthalene, drop down into this hole or opening around the valve and then [727] connect up

his hose; is that correct? A. As regards the after deck, in order to connect it they had to go down through these openings in the stow, but there was also room on the boat deck and the lower bridge to connect up there without going down.

Q. Chief, after you left the engine room, having been driven out by the smoke, you returned, did you not? A. Yes. When I got up on the starboard boat deck the chief officer told me that some of the men were missing and we agreed that we were going to go aft through the shaft alley and the escape exit and see if we could get to them.

Q. That is because you understood the missing men were in the poop? A. Yes, we couldn't see them on the deck so we thought—we couldn't see them on the deck or in the lifeboat, therefore we thought they might be in the engine room shaft alley or poop, and that is why we decided to go there.

Q. Did you talk with the third officer? A. No.

Q. The Belgian messboy was one of the missing men, was he not? A. Yes.

Q. And did somebody return to the engine room [728] with you? A. Yes, the chief officer.

Q. And you two made every effort to get into the shaft alley, did you not? A. We not only tried to get into the shaft ailey but we got through the shaft alley to the emergency exit after part but there we had to turn around on account of the smoke. We had no——

Q. Smoke mask? A. ——smoke mask.

[729] Q. Was the smoke pouring down the emergency exit into the shaft alley? A. Yes, both through the ventilator that is placed there and also through the poop itself.

* * *

[730] *Re-direct examination by Mr. Pyne:*

Q. Mr. Longley if I understood him correctly referred to you as the third officer. Who was it that went with you through the shaft ailey to try to find the missing man?

The Interpreter: The chief officer.

Mr. Pyne: Maybe I misunderstood him. He answers chief engineer.

The Interpreter: Yes, that is right.

Q. Chief, these pictures that have been offered here in evidence as Petitioner's Exhibits O, P, Q, R and S, I do not find in that any outlets for a hose connection on Exhibit O. There was none in that deck, in that area, was there? A. That is because this picture has been taken [731] from this angle, and it does not get into the picture, because this corner is this corner (indicating).

Q. I understand that this is a picture looking forward on the port side. Are you telling us that the hose connection is to the right as you look at this picture? A. Yes.

Q. Now I show you this picture which is Petitioner's Exhibit Q. That is looking aft. I do not see any hose connection there. Can you tell us where it was in that picture? A. That is taken from this forward corner looking aft. You cannot see the valve from that direction. The valve is located here (indicating).

Q. You have got it marked with a cross. Well, I don't quite understand why one cannot see it. Do you mean it is around the curve here? A. Here is the smokestack and the pipe is coming up through the smokestack on both sides of same.

Q. Looking at Petitioner's Exhibit Q, so I may understand it and the Judge, too, the hose connection you refer to is around the curve of this building here? A. This corner here is this corner (indicating).

Q. I see. A. It is impossible to see the valve from that direction.

[732] Q. Then on Petitioner's Exhibit S, I see a valve here. Is that one of those to which you referred? A. Yes, that is the one.

• • •

Harry Kristiansen—For Petitioner—Direct

HARRY KRISTIANSEN, called as a witness on behalf of the petitioner, was duly sworn through the interpreter, and testified through the interpreter as follows:

Direct examination By Mr. Pyne:

Q. By whom are you now employed, Mr. Kristiansen? A. Sigurd Herlofsen & Co.

Q. Are you a member of the crew of any vessel now? A. I am the chief officer of the Black Tern.

Q. You formerly were a member of the crew of the Black Gull? A. Yes.

Q. You were second officer on the Black Gull on the voyage on which the fire occurred? A. Yes.

Q. For how many years total have you been going to sea? A. About twelve years.

Q. Do you hold any license? [733] A. I got the chief officer's certificate. I also hold a master's certificate.

Q. Mr. Kristiansen, we are having trouble back here in hearing, so speak up a little bit. How long have you held a master's license? A. Half a year.

Q. And how long have you held a mate's license? A. Since June 1950.

Q. How long have you been on vessels, all of them, which were in the Black Diamond Steamship Corporation trade? A. Since August, 1950.

Q. When did you first join the Black Gull? A. August, 1950.

[734] Q. And did you remain on the Black Gull until the time of the fire? A. Yes.

Q. And throughout that whole time were you her second officer? A. I commenced there as third officer, became second officer, was chief officer for one voyage and went back to second officer.

Q. When, if you can remember, did you first become second officer? A. April 14, 1951.

Q. And you remained second officer right down to the time of the fire? A. Except for that one voyage when Lyngaas was brought to the hospital at Rotterdam and I went out as chief officer.

Q. Can you tell us, Mr. Kristiansen, whether or not on vessels other than the Black Diamond—you have made trips—on other than the Black Gull you have made trips to the United States when the vessels carried naphthalene, crude naphthalene? A. Black Gull, Black Heron, Black Tern, Black Hawk.

Q. In other words, including the Black Gull, you have made voyages from Europe to the United States [735] on four vessels which carried naphthalene? A. Yes.

Q. In total, can you tell us about how many voyages you made between Europe and the United States on vessels carrying naphthalene? A. About 28.

Q. Did you see the manner and way in which the naphthalene was stowed on the deck of the Black Gull when that vessel left Rotterdam July 10, 1952, for the United States? A. Yes.

Q. Did you see the stowage of the naphthalene on the deck during the voyage on which the fire occurred? A. Yes.

Q. How often and under what circumstances did you see the stowage of the naphthalene on that voyage? A. I saw it all the time when I had watch on the bridge, and otherwise when I was off watch, when I had something to do on the deck.

Q. What watch did you stand while the vessel was under way as deck officer? A. From 12 to 4 watch.

Q. That would be 12 to 4 a. m. and 12 to 4 p. m.? A. Yes.

[736] Q. Now, with respect to the bags of naphthalene on the deck, both forward and aft of the masthouse on this voyage on which the fire occurred, will you describe the appearance as you saw it of the top and the sides of that stow? A. As a compact stowage.

Q. When you say "compact stowage," will you tell us further what you mean by that? A. The bags are stowed closely together.

Q. Were there or were there not any openings or crevices between the bags at any place, the top or sides? A. No.

Q. How did the method or manner in which the naphthalene stowed on the Black Gull on this voyage on which the fire occurred compare with the manner and method of stowage of the naphthalene on these other voyages which you have mentioned when vessels carried naphthalene on which you served? A. Exactly the same stowage.

Q. Now, where were you on the night of July 18, 1952, when you first heard or learned that there was any trouble or fire? A. In my bunk.

[737] Q. And where was your bunk on the vessel? A. The foremost room on the starboard side on the deck.

Q. On that boat will you tell us whether or not anywhere out on the decks or open parts of the vessel there were any sign or signs involving or concerning smoking? A. Yes.

Q. Tell us where they were, and if you want to make use of the vessel's plan, do so. A. Two on the after part of the forecastle head, one at the forward and after bulkheads of both masthouses on the forward deck, one at the forward part of the midship building, one on each side at the entrance to the gangway, one at the after part of the midship building, one at the forward and one at the after bulkhead of the masthouse on the after deck, and at least one at the forward bulkhead of the poop. That's all.

Q. What was the wording of those signs or any of them? A. "No Smoking."

Q. Describe the signs as to sizes of the letters. A. The letters were about 5 or 6 inches high.

[738] Q. Did you yourself, during the voyage on which the fire occurred, ever smoke at any time during the voyage while you were out on deck or on the wings of the bridge? A. Not out on deck.

Q. How about the wings of the bridge? A. No.

Q. Did you, during that voyage, ever see anybody else smoking out on deck anywhere on the vessel in the open? A. No.

Q. Did you ever go into or see the inside of any of the passenger cabins? A. No, I have nothing there to do.

Q. Now, you stated that you were in your bunk on the night of July 18, 1952. A. Yes.

Q. What caused you to leave your bunk? A. One of the stewardesses came and woke me up and said there was fire on deck.

Q. What did you do then? A. I turned out immediately.

Q. Where did you go? A. Out on deck.

Q. Whereabouts on deck and what did you do? [739] A. I went out on the boat deck, got ahold of a hose and connected same up and sprayed water from the boat deck down on the fire.

Q. Where was the fire as you saw it? A. About in the middle of the stowage, at about the middle of No. 4 hatch.

Q. How long did you continue to play water from that place? A. About 10 minutes.

Q. And where did you go then? What did you do? A. Then I went out on the deck and tried to get out from the door on the port side, while at the same time I tried to lock the door there which was standing open.

Mr. Pyne: I did not get that.
(Answer read)

Q. Port side where, and what door are you talking about? A. I am talking about the port door in the midship building. That is the after door.

Q. Did you close the door? A. I couldn't get to it on account of the fire.

Q. Now, where—if you will, please, tell us where you went and what you did. [740] A. I went all through the rooms on the port side to see if there were anybody there.

Mr. Pyne: To see what, Captain?

The Interpreter: ". . . to see if there were anybody there."

Q. Well, proceed and tell us what happened. A. Then I went back on the boat deck and probably continued to spray water. At that time there was already fire on the after end of the port lifeboat. Then the captain said, "Try to get the starboard lifeboat"—and then the captain ordered the starboard lifeboat to be put into the water in order that same also should not catch fire.

Q. Did you have anything to do with the launching of that starboard lifeboat? A. Yes, I had the command of the starboard lifeboat.

Q. Will you tell us what was done and how it was launched? A. The lifeboat was made ready, lowered down to the level of the rail of the boat deck, and the passengers came out. First all the ladies were put into the lifeboat and the remainder of the passengers and sufficient crew to maneuver the boat. Thereupon [741] it was lowered down.

Q. Were you in the boat yourself as it was lowered? A. Yes.

Q. When you say the boat was made ready for lowering, will you describe or state how it was made ready; what was done? A. All the covers on the boat were taken up, the plugs were put in, and it was then lowered down to the level with the rail in order to get the passengers in.

Q. You have referred to plugs. Will you tell us what you mean by "plugs"? A. In the forward and after part of the lifeboat there are draining holes and at the side of each hole there is a chain with two plugs. The plugs are made from cork with bolts running through them and then each plug has got a metal sheave with through-going bolt.

• • •

[742] Q. You state that there is a chain at each of these two drainage holes with two plugs; is that correct? A. Yes.

Q. What is the purpose or use or reason for two plugs for each hole? A. One for reserve.

Q. Can you tell us whether or not to your personal knowledge and observation each of those holes was plugged or closed before the lifeboat was lowered? Were they plugged? A. Yes.

Q. There has been some testimony here from a passenger to the effect that when the boat was in the water plugs were not in place. What do you say as to that? A. I say the plugs were in place.

Q. After the boat was in the water did any plugs come out of place that had been put in? A. No.

Q. About how long was it, Mr. Kristiansen, after you first heard of the fire until the time that the lifeboat was launched? A. About half an hour.

Q. Will you tell us whether or not there was any confusion or any hurry in connection with the launching of that boat and the putting of the passengers and the crew into it? A. Everything went quite normally, quiet and in good order.

[743] Q. When the lifeboat reached the water when it was first lowered will you describe what occurred then, what happened? A. When the lifeboat got into the water and had been cleared from the tackle, it was hauled forward.

Q. How was it hauled forward? A. By the crew on the deck.

Q. Where forward was it hauled to? A. To about the forward part. To the forward part, forward of the midships building.

Q. Besides yourself, how many others of the crew were in that lifeboat when it was first launched as you have stated? A. Ten men.

Q. Why and for what reason was the lifeboat hauled to the forward position that you have mentioned? A. It was hauled forward as it was the intention to have the boat lying there forward of where the fire was.

Q. For what purpose was that intended, to have the boat there? A. It was a safer place to have the lifeboat there than to have same hanging in the davits.

Q. Incidentally, what was the total capacity in persons of that lifeboat? A. Fifty.

[744] Q. And what was its condition? A. In a completely good condition.

Q. How about its equipment, will you describe that? A. There was the ordinary lifeboat equipment such as water, bread, medicines, signalling equipment, eleven oars, a mop and sail.

Q. Did the boat have a rudder? A. Yes.

Q. Was the rudder put outboard or in place at any time? A. No.

Q. Why not? A. It was not necessary.

Q. Did the passengers when they entered that lifeboat all of them have life jackets on? A. Yes, everybody, both passengers and crew.

Q. While the lifeboat was up alongside the Black Gull, forward on the Black Gull, will you tell us what occurred there? A. The ship had still headway, and the lifeboat which was lying on the starboard side from where both wind and sea came in, was shipping water. While at the same time water was also running through the scuppers on deck down into the boat. Then I decided to cut the painter.

Q. When you say painter, do you mean the line between the lifeboat and the deck of the Black Gull? [745] A. Yes.

Q. Will you proceed and tell us what happened after you cut that line or painter? A. We tried to get the lifeboat clear of the ship's side, but we drifted too fast aft towards No. 4, and I understood that we would not be able to get the lifeboat out before we got abreast of No. 4, there-

fore I brdered all of those in the lifeboat into the water on the lee side of the lifeboat, to lie on the lee side of the lifeboat hanging on to the lifeline on the lifeboat, which everybody did, and after we had passed No. 4, all of them got back into the lifeboat again.

Q. About how long would you say that the persons who were in the lifeboat were in the water before they got back into the lifeboat? A. From the order that was given to jump overboard until they got back again I should say two or three minutes, but it took a longer time than that before the last man got back into the lifeboat again.

Q. Is there any way of estimating the time before the last person got in? A. If you add about five minutes, it would be good time.

Q. Where in the lifeboat were these members of [746] the crew that you have mentioned and what were they doing? A. They were spread in the boat. We had three or four oars out—three being handled by the crew and one by a passenger.

Q. How many oar locks or places to use oars were there along the sides, each side of the lifeboat? A. Five on each side, and one for steering.

Q. How many oars did the crew have out? A. We had four oars out in all. It was not necessary to use more as we only kept the lifeboat in place.

Q. When you say you kept the lifeboat in place, what do you mean by that? A. In the vicinity near the Black Gull.

[747] Q. Was it necessary to do any rowing? A. No.

Q. And did you take any other person or persons into the lifeboat after that, and if so, who and when? A. All in all, I picked up four men of the crew which had jumped overboard. One had jumped overboard from the poop, and three jumped overboard from forward just before the others left the ship.

Q. How about Mr. Valen? Did he reach the lifeboat? A. He came into the lifeboat before the painter was cut.

Q. What was his condition when he entered and how did he get in? A. He was burned on the hands and face. I think—I believe he was lowered down.

Q. It has been testified here, by one passenger at least, that the crew in the lifeboat did not seem to be able to row. What do you say as to that? A. The crew which was in the boat could row. One of them was an a.b., one was an ordinary seaman, who the year afterwards was in the lifeboat that won the lifeboat race here in New York, the next year.

Q. Well, were the crew able and capable of carrying out any order or orders you gave them? A. Yes, of course.

[748] Q. And did they carry out all orders you gave them? A. Yes, of course.

Q. Now eventually did the remainder of the crew of the Black Gull enter the lifeboat? A. Yes.

Q. All of them? A. Yes. But at that time the motor lifeboat from the Gripsholm had already arrived and was moored to the stern of our lifeboat.

Q. Now you have mentioned that the lifeboat shipped water while it was made fast or had the line out to the Black Gull—shipped it, if I understood you correctly, over the side? A. Yes.

Q. What was the cause or how did that come about? A. The ship was steering some headway. The lifeboat was lying moored along the ship's side. When the wind and sea strikes the ship's side it sprays over into the lifeboat.

Q. You have also stated some water came into the lifeboat from the scuppers on the deck of the Black Gull? A. Yes, then they are using a lot of hoses on deck you get water there and it has got to come out again.

Q. How much water at most, when all of the water that came in was in, however it got in—how much water [749] was in the lifeboat? A. When I cut the painter I should say between one and one and a half foot.

Harry Kristiansen—For Petitioner—Direct

Q. And where do you measure that one and one and a half foot? A. It is three feet from the bottom of the boat to the——

The Interpreter: I haven't used that word for a long time——

A. (Continuing)—to the board that you sit on in the lifeboat.

Mr. Pyne: To the thwarts or the seat.
The Interpreter: Seat.
Mr. Pyne: The cross thwarts.
The Interpreter: The cross thwarts, yes.

Q. And when you measure the one to one and a half foot, to what part of the lifeboat itself are you making the measure—the sides, the center or where? A. In the middle of the boat.

Q. And about how high do you say the cross pieces or cross seats were above that center part of the boat? A. About three feet.

Q. There has been some testimony here from a passenger to the effect that there was a heavy piece of wood across the middle of that lifeboat. Will you [750] tell us whether or not there was any piece of wood there, and if so, describe it and what happened to it? A. That was the mast.

Q. And what was done with the mast? A. We threw it overboard in order to give more space so that they could move around in in the boat.

Q. Was the mast needed in the boat? A. It might be necessary but it wasn't necessary at that time because we were lying right in the steamship lane between New York and Europe.

Q. What was the condition of the sea at this time and while the boat was in the water? Was it smooth or rough or what was it? A. A little swell, some choppy sea.

Harry Kristiansen—For Petitioner—Direct

Q. There has been some testimony by one passenger that there was a piece of iron across the middle of the boat. What do you say with respect to that? A. I don't know anything else but that on the side which is towards the ship's side we have a sort of wooden glider which is—which is shoed with steel, fastened on the inside of the rail (indicating), and the other one is fastened underneath the keel of the boat.

On the inside of it there is a handle which is so connected that when you pull on it the hold on [751] the keel is released and then you can pull up the whole thing and drop it overboard.

Q. What is the purpose or use of that equipment? A. The purpose of it is to protect the lifeboat when lying alongside of the ship, while at the same time if the ship should have a list it will help in sliding the boat when being lowered down.

Q. In other words, it acts as a protection between the lifeboat and the side of a ship when the boat is being lowered or towed alongside? A. Yes.

Q. Now was there any such piece of equipment detached and thrown overboard from this lifeboat? A. After we got clear of the ship and everybody had gotten on board again, they were loosened and thrown away.

Q. Were they of any use after that? Could they have been of any use after that? A. No.

• • •

[752] Q. You mentioned, Mr. Kristiansen, that the Gripsholm's lifeboat came. Was there anybody transferred from the Black Gull-lifeboat to the Gripsholm lifeboat? A. Yes.

Q. Who or about how many persons went from the one lifeboat to the other? A. I can't say exactly how many, but about half of them.

Harry Kristiansen—For Petitioner—Cross

Q. Did you personally see every one of those persons when they were going from one boat to the other? A. Yes, I assisted all of them from our boat into the other.

Q. During that transfer from one boat to the other, was there any person who fell? A. No, not during the shifting.

Q. Well, did you see any person fall, or did you see any person injured at any time in one or the other of the lifeboats, or going from one to the other? A. No.

[753] Q. After the transfer of those persons from one lifeboat to the other, what then occurred? A. After everybody had gotten into the lifeboat and the master was the last that came, then they towed us from the Black Gull over to the Gripsholm.

Q. That is, the Gripsholm's motor lifeboat towed the Black Gull's lifeboat? A. Yes.

Q. Do you know at what o'clock time approximately that occurred? A. Exactly the time I cannot remember, but it must have been about 3:30.

Mr. Pyne: That is all.

By the Court:

Q. How many people left the Black Gull by the lifeboat? A. Forty-six.

Q. How many of them were in the Black Gull's lifeboat before the transfer? A. Twenty-four.

Q. What was the capacity of the Black Gull's lifeboat? A. Fifty.

Cross-examination by Mr. Abberley:

Q. Mr. Kristiansen, you were generally familiar with both the lifeboats of the Black Gull, were you not? A. Of course.

Q. What was the port boat constructed of? A. Wood.

[754] Q. What was the capacity of the port boat? A. Fifty.

Q. Did the port boat have power? A. Yes.

Q. What size engines did the port boat have? A. I don't know.

Q. How fast could the engine which the port boat had drive the lifeboat when in the water? A. Five or six miles, I should say.

Q. What was the speed of the Black Gull just prior to the time when the port boat caught on fire; how fast would you say she was going through the water? A. I cannot say.

Q. Will you make an estimate, your best estimate? A. She had headway, but I don't know how much.

Q. Would you say that the Black Gull was going through the water faster than the lifeboat might have been able to go through the water had it been launched? A. I can't tell.

Q. How many men were required to launch the port lifeboat? A. Six men.

Q. How long would it take to launch the port lifeboat? A. From the time you start to get the boat ready until you got it in the water it will take four [755] to five minutes.

Q. How many men are required to handle the port lifeboat when it is in the water? A. There is nothing special as to how many men.

Q. Did the port lifeboat have an assigned crew? A. Yes.

Q. Who was the officer in charge of the port lifeboat? A. The chief officer.

Q. When you were on the boat deck during the occasions which you previously mentioned fighting the fire, did you see the first officer on the boat deck in the vicinity of the port lifeboat? A. I saw him at the after part of the boat deck with the hose.

Q. Was the port lifeboat on fire at that time? A. Not immediately but soon thereafter; it caught fire pretty soon.

Q. Could the first officer have given the order to lower the port lifeboat? A. He could, but then they would have lost crew in order to fight the fire.

Harry Kristiansen—For Petitioner—Cross

Q. Do I have it then correctly that you had a crew of forty men on the Black Gull? A. Everybody figured, yes.

Q. Do I also understand correctly that it would [756] take six men to launch the port lifeboat? A. Yes.

Q. Do I also understand that it would require the orders of the captain to launch the port lifeboat? A. No. You got to have the master's orders to put a lifeboat in the water.

Mr. Kristiansen, you were the officer in charge of the starboard boat, is that correct? A. Yes.

Q. When had you last been in the starboard boat for purposes of holding a lifeboat drill? A. When I can't say. I need a logbook.

Mr. Abberley: Is the logbook available?

Mr. Pyne: That is it (handing).

Q. I show you a logbook (handing witness). See if you can find an entry as to when you, as the officer in charge of this lifeboat, last conducted a lifeboat drill. (A. Witness examines.)

Q. There is a great deal in the log. Perhaps I can suggest a date to help you find the place. If I suggested the date of April 19, 1952, as a time when the Black Gull held a lifeboat drill, would you agree with that if the logbook shows that? A. (in English) Yes. (Through interpreter:) Yes.

[757] Q. Which lifeboat was used at that time? A. Port.

Q. Going back from that date, can you find when the starboard boat was last used for a lifeboat drill? A. On April 19th, port lifeboat was put in the water. Crew standing by starboard lifeboat. Every man checked.

Q. What period of time does this log cover, Mr. Kristiansen, you are now looking at? What is the date of the first entry in the log? A. March 5th, 1952.

Harry Kristiansen—For Petitioner—Cross

Q. Do you find an entry in this log where you, as the officer in charge of the boat, of the starboard lifeboat, conducted a lifeboat drill with the boat launched and put in the water? A. No.

Q. Do you have any recollection as to when you might have conducted a lifeboat drill using the starboard lifeboat? A. I can remember but not when, and in regard to that I need the logbook before this one.

• • •

[758] Q. Mr. Kristiansen, you referred to ten men as being members of the crew who manned the starboard lifeboat when she was launched. Were these ten men the regularly assigned crew members to the starboard lifeboat? A. No, there were some from the port boat.

Q. Did you have a regularly assigned crew for the starboard lifeboat? A. Yes.

Q. How many men were assigned to man the starboard lifeboat? A. Half of the crew.

Q. How many men were assigned to—when I used the word "man," by this I mean handle and row and steer and maneuver the starboard lifeboat. Certainly half the crew doesn't do that.

• • •

A. To maneuver and steer the boat, I do myself. In regard to rowing the boat, I got to have four men.

Q. When the lifeboat was lowered in the water, was there any water in the bilges of the lifeboat? A. There are no bilges there.

• • •

Q. Was there any water in the bottom of the life- [759] boat? A. No.

Q. When the starboard lifeboat entered the water was the bow somewhat higher than the stern? A. The after part of the boat, the stern, took the water first.

Harry Kristiansen—For Petitioner—Cross

Q. How soon after the stern was in the water was the bow allowed to enter the water? A. Immediately.

• • •

Q. How soon after the boat was in the water was the tackle which lowered the boat in the water free? A. Immediately.

Q. You have described a painter or bowline attached to the bow of the starboard lifeboat and let up and forward. Was this bowline on the lifeboat at the time she was lowered into the water? A. It was led forward before the boat was in the water.

Q. So that it was attached to the boat when the boat was loaded and put into the water? A. Yes.

[760] Q. Did this line prevent the lifeboat from moving free of the ship? A. It is there for the purpose to hold the lifeboat when the tackles are released.

Q. You described the condition of the wind and seas and you described the wind blowing over the starboard side of the lifeboat and the water being blown or splashed over the starboard rail of the lifeboat, and you have said that the Black Gull had way, and I understood you to say that you were not rowing at the time. I ask you, would the effect of the waves and wind coming from the starboard side, plus the forward motion of the Black Gull secured to this rowboat, have the effect of dragging the rowboat alongside of the Black Gull? A. Yes, of course.

[761] Q. Now isn't it true that the boat did close in on the side of the Black Gull at the place where there was a fire on the Black Gull? A. That was after the line was cut, yes.

Q. Was it the fact that the side of the ship was so hot it forced the passengers to leave the lifeboat and jump into the water? A. No.

Q. Why did the passengers leave the lifeboat and get into the water? A. On account of the heat from the ship's deck.

Q. So that it was the heat that forced the passengers from the lifeboat into the water? A. Yes.

Q. Were you wearing a watch at the time? A. No, I am sorry to say it was left in the room.

Q. Did all of the crew of the lifeboat get into the water? A. Everybody who was in the lifeboat got into the water.

Q. When for the first time did you start to row this lifeboat? A. I would say that we never rowed the lifeboat, we only kept it in place.

Q. How is it that one of the passengers was allowed to row the lifeboat? A. He took an oar, and I thought all right, let him keep that oar.

[762] Q. When did you first ship the rudder or cast the rudder, to the stern of the lifeboat? A. The rudder was never put on.

Q. Do I understand by this that there was no occasion when you were required to steer or maneuver the lifeboat? A. We had a steering oar.

Q. When was the steering oar used for the first time? A. When we rowed the lifeboat towards the bow of the Black Gull.

Q. How much time would you say had elapsed between the time the lifeboat first entered the water and the time you first started to steer or maneuver this lifeboat and row it; what was the interval of time? A. We maneuvered and steered about and kept the boat in place until we got orders from the forecastle to come up to the bow. It was probably a couple of hours.

Q. Where were you standing when the boat was lowered, Mr. Kristiansen? A. At the stern of the boat.

Q. How long was this boat? A. The boat is 26 feet 3½ inches long.

Q. Who put the forward bilge plug in the bottom of the boat? A. One of the men that took the board [763] of the boat off the lifeboat.

Q. Did he tell you he put the bilge plug in the forward bilge? A. I asked if the plugs were in before the boat was lowered, and I received the answer, yes.

Q. You mentioned before that at one time you had from a foot to a foot and a half in the bilges of the lifeboat.

Mr. Pyne: I beg your pardon, Mr. Abberley, there is no bilge in a lifeboat, as the witness already has said—in the bottom of the lifeboat.

Mr. Abberley: In the bottom of the lifeboat.

Q. Was there a pump in the lifeboat? A. Yes.

Q. Was the pump used? A. No, we bailed out, we used buckets.

• • •

By Mr. Longley:

Q. When you learned of the fire, you immediately went to the after deck, did you not? A. I went to the boat deck.

Q. And from there where did you go? A. First we tried to extinguish the fire from the boat deck

Q. With a hose, you mean? A. Yes.

[764] Q. Was there a hose then connected to one of the valves of the boat deck? A. I think I myself was alone connecting it.

Q. Where were the hoses, that is, the fire hoses, kept on this vessel? A. In a box fastened to the engine room casing on the boat deck.

Q. Then, having use that hose, what did you do next? A. I handed the hose to another man and then I went down into the midships house alley.

Q. Did you sometime thereafter go on the after main deck? A. No.

Q. Then the nearest you ever came to the fire, then, was on the boat deck aft? A. Yes, the after part of the boat deck.

Q. And you played the hose on when you saw the flame in the naphthalene, on the port side, did you not? A. Yes.

Q. And that flame was about halfway across the stow from port to starboard, was it not?

Well, i did not put it very well. I will withdraw that question. The flames were about halfway on the top of the stow between the hatch coaming and the port side of the ship. A. Yes.

Q. And that is the only place you saw any flame, [765] was it not? A. To begin with, yes

Q. And then the flames extended over the top of the stow with great speed, did they not? A. I won't say very fast, but it spread.

Q. And there was a high flame and much black smoke; isn't that true? A. It was a flame. I can't say the height of it but it was very much smoke.

Q. When you first got there and saw the flame, approximately how large an area was it burning on the top of the stow? A. I can't say.

Q. How many hoses were playing on the fire when you got there? A. One was connected when I got there, two or three others were connected just afterwards.

Q. And these were all four fire houses connected up to the water system of the vessel? A. Yes.

Q. And that water was played on this fire under pressure from the fire hoses, was it not? A. Yes.

Q. And instead of the fire being extinguished it spread from the stow of naphthalene on the port deck; isn't that so? A. Yes.

Q. And then the fire spread the naphthalene on [766] the starboard side of the deck? A. Well, that was after the lifeboat had been put into the water.

Q. You mean you didn't see that, you didn't see it burning on the starboard side? A. Yes, from the lifeboat.

Q. And you saw molten naphthalene blazing and running down the ship's side, did you not? A. Yes, after the lifeboat was clear of the ship.

Harry Kristiansen—For Petitioner—Cross

Q. And from where you were in the lifeboat you saw the fire burn from aft forward and destroy the midship structure, did you not? A. Yes.

Q. And then the fire spread forward and consumed the naphthalene on the forward deck, both port and starboard, did it not? A. Yes.

Q. On this vessel there was a fire-detecting apparatus on the bridge, was there not? A. Yes.

Q. That apparatus consisted of little tubes up in the pilothouse which led down to the respective cargo compartments, isn't that so? A. Yes.

Q. And when a fire was burning in a compartment, [767] smoke would show itself in these glass tubes, isn't that true? A. Yes.

Q. And it also, if there was smoke, rang a bell on the bridge, didn't it? A. No.

Q. No bell. You had to look and visually see the smoke in your system? A. Yes.

Q. During one period of this fire there were explosions on board the vessel, were there not? A. During the time we were in the lifeboat we saw one explosion but I do not know where it came from.

Q. Was it in the after end of the ship? A. It was around near midships.

Q. The steering engines of this vessel operated in good condition until long after the fire, did they not? A. I don't know. I was in the lifeboat.

Q. Did you have anything whatever to do with the stowage of naphthalene on the deck of the Black Gull? A. I had to look after the stowage when I had cargo watch.

Q. During the course of loading, you mean? A. Yes.

Q. Did you go down on the decks and see how the naphthalene was stowed? A. During the loading I went always up and the deck and also into the holds.

[768] Q. How was the bottom tier of naphthalene stowed as to compactness on the after deck of the Black

Gull? A. It was stowed tightly thwartship with opening between every third bag in order that the water could drain off.

Q. During the course of the voyage between Rotterdam and the time of the fire, you encountered weather that caused your ship to roll and pitch, did you not? A. I don't remember. I got to look in the log for it.

Q. Well, do so. Do you have it there? A. No.

Mr. Longley: Do you have the logbook?

(Mr. Pyne hands to counsel, who hands to the witness.) (Witness examines.)

Q. I call your attention particularly to July 11th and July 17th. A. The 11th, fine weather.

Q. Didn't your vessel pitch and roll on that day, according to the entries in your logbook? A. No.

Q. Well, what about the 17th? A. (After examining) No.

Mr. Longley: Let me see those entries in [769] the logbook—the protest, Mr. Zisgen. Did I get the wrong dates?

Mr. Zisgen: Here is the 11th (handing).

Q. Well, I got the wrong dates. The 13th of July (handing). A. (Examining.)

Q. On that day your vessel pitched and you had spray over the decks and hatches, did you not? A. Some pitching with spray over deck and hatches.

Q. And on the 17th you had a force 6 wind, did you not? A. Yes.

Q. Is the force of your winds computed on the Beaufort scale? A. Yes.

Q. And on the 12th your vessel pitched with spray over the deck and hatches, isn't that true? A. (After examining) Yes.

Harry Kristiansen—For Petitioner—Cross

Q. When your vessel pitches and rolls in the ordinary weather which you have in the trans-Atlantic voyage, you know that your cargo moves, isn't that true? A. With good stowage, no.

Q. You mean Under deck? A. Under deck and over and on deck.

Q. What stops in this case the cargo of naphthalene on deck moving around as the vessel moved? A. The cargo is well stowed and besides that [770] it was lashed with nets.

Q. You spoke of the stowage of naphthalene on other Black Diamond vessels. A. Yes.

Q. On many of the voyages to which you referred there were very small numbers of bags of naphthalene on deck, isn't that so? A. The naphthalene cargoes on different vessels were smaller or larger.

Q. Depending on the cargo offered, you mean? A. I don't know anything about what is offered to us.

Q. There couldn't be much more cargo of naphthalene on deck than there was on the Black Gull, could there? A. The ships which have larger decks can, of course, carry larger loads.

Q. That is fair enough. However, as far as concerns the Black Gull, she had her decks covered with naphthalene, both forward and aft, isn't that so? A. Yes.

Q. As the naphthalene was stowed on the Black Gull it was exposed to the sun's rays throughout the voyage across the Atlantic, wasn't it? A. Yes, the day that we had sun.

Q. That is fair enough, too. And you know [771] that the naphthalene was stowed in jute bags? A. Yes.

Q. What did you know when this voyage commenced concerning the characteristics of naphthalene? A. What we call dangerous cargo.

Q. What was the danger as you understood it? A. That the cargo was inflammable.

Q. Did you receive any particular warning from anyone as to the care to be taken in connection with it? A. Not to smoke on deck.

Q. You did smoke when you were on watch on the bridge and in the chart room, did you not? A. Not on the bridge but in the chart room.

Q. What about the wheelhouse? A. Yes.

Q. And you saw other officers and members of the crew smoking in the wheelhouse and in the chartroom, did you not? A. No.

Q. I understood you to say that you didn't see anyone smoking out on deck? A. Yes.

Q. You didn't mix with the passenger, did you? A. No.

Q. And you weren't up on the decks where the passengers walked, were you, at any time? [772] A. Yes, off and on when I went on the bridge and from the bridge.

Q. You mean that you crossed the deck where the passengers walked in going up to the bridge? A. Yes.

Q. The electrical connections on this vessel were in order at all times, were they not, until after the fire? A. As far as I know, yes. I don't know all about it.

Q. You told us that some of the crew members jumped into the water after the fire? A. Yes.

Q. How many of them had jumped from the poop? A. One.

Q. Did you, after the fire broke out, at any time see the Belgian messboy? A. He was amidships immediately after the fire started. Then all hands were amidship.

The Court: I did not get that.

(Answer read.)

Q. And then did he go aft to fight the fire? A. I don't know.

Q. You didn't see him after that one time? A. No.

• • •

Harry Kristiansen—For Petitioner—Cross
Deposition of Dr. W. N. E. Van Rossem

[773] By Mr. Abberley:

Q. Mr. Kristiansen, with respect to the number of people in the lifeboat at any one time, do I understand that you transferred people from your lifeboat to a lifeboat belonging to the Gripsholm? A. Yes.

Q. Just prior to the time the shift or transfer was made, how many people were in your lifeboat? A. Twenty-four.

Q. And where were the other people, the other members of the crew of the Black Gull? A. On the forecastle head.

• • •

[775] Mr. Pyne: I would like to read, your Honor, from the deposition of Dr. W. N. E. Van Rossem. He was a witness examined by deposition at Rotterdam August 23, 1955, and he had been sworn by the U. S. Consul:

"Q. Doctor Van Rossem, where do you reside? A. At The Hague.

"Q. What is your occupation? A. I am a barrister and solicitor at Rotterdam.

"Q. Are you a member of any law firm? A. Yes, I am.

"Q. What firm and for how many years have you been a member? A. I have practiced since 1917 in Rotterdam, always in the same firm.

"Q. Has the name of that firm over that period of time been changed? A. When I came here in 1917 I was what we call a 'junior,' an assistant in the law office. The name of the firm where I was an assistant was first Van Raalte & Van Walsem, and then Jacobson, Nauta & Van Walsem. On the first of January 1924 I became a partner and then the firm was called Nauta, Van Walsem, Van Rossem & Offerhaus. There have been some changes [776] in the members of the firm and now it is called Van Walsem, Van Rossem, Loeff & De Groot.

Deposition of Dr. W. N. E. Van Rossem

Q. I notice you refer to the name Jacobson. Was there ever another firm of the name of Jacobson, Nauta, Van Walsem and Vlug? A. No, such a firm has never existed. The name Vlug has never been connected with the firm.

"Q. Was there ever a firm of that name? A. No, never.

"Q. Mr. A. C. W. Beerman has testified that there was a firm of Jacobson, Nauta, Van Walsem & Vlug. A. Then his memory must have left him.

"Q. Was Mr. Beerman ever connected in any way with your firm? A. Yes, from 1925 to 1930 he was an assistant in my firm, he was my assistant.

"Q. Was Mr. Beerman ever a partner or junior partner in your firm? A. No, never. He was an assistant in the time the firm was called Nauta, Van Walsem, Van Rossem & Offerhaus.

"Q. Are you admitted or licensed to practice in any Netherlands court or courts and, if so, what court or courts? [777] A. Of course I am. All Dutch barristers are qualified to appear before all courts in the Netherlands including the 'Hoge Raad,' what you call in America the Supreme Court, without any exception.

"Q. Are you now or in the past have you been a judge in the Netherlands of any court, and, if so, what court? A. Since 1923 till 1943 I was a deputy judge in the Cantonal Court at Rotterdam and in 1943 I became a deputy judge and I am still a deputy judge in the Court of First Instance at Rotterdam.

"Q. What has been your education both generally and also specifically with respect to law studies? A. I studied law at the University of Leyden and I took my degree in 1917.

"Q. What degree did you then receive? A. The degree of doctor of law.

"Q. Is that degree of a doctor of law the equivalent of the degree of a master of law? A. No, not quite the same. A master of law has only passed his final examination, but did not write a dissertation, nor did he put forward any theses, I put forward theses.

Q. Is a person who has received the degree of [778] a master of law authorized or entitled to use the title or prefix Dr. to his name? A. No, surely not.

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, in maritime law.

"Q. Are you a member of any legal institutions, societies or associations? A. Yes, of course I am.

"Q. Would you name some of them? A. First of all I am since 1948 the chairman of the Rotterdam Bar and since 1953 I am the deputy chairman of the Netherlands Bar. Moreover, I am a member of some legal societies; the Netherlands Advocates Society, the Dutch Jurists Society.

"Q. Are you a member of what has been called here the C. M. I.? A. No.

"Q. Or the N. J. V.? A. Yes, that is what I meant by Dutch Jurists Society.

[779] "Q. Will you explain to us what is meant by Chairman of the Rotterdam Bar and Deputy Chairman of the Netherlands Bar? A. At the top of each Bar, e.g., the Rotterdam Bar, is a council of 7 members including the chairman, and their duty is to see to it that things run well and especially that the advocates don't do wrong things. They have authority to punish them.

"Q. If I understand you correctly, their duty is to discipline any member of the Bar who has done an improper act? A. Yes, that is correct.

"Q. Have you made any research or investigation of the question whether there is any law, rule or regulation in the Netherlands concerning the manner of loading, stowing and carrying of naphthalene on vessels? A. Yes, I have.

Deposition of Dr. W. N. E. Van Rossem

"Q. Is there in force now or has there been in the past in force in the Netherlands any such law, rule or regulation involving the loading, stowing or carriage of naphthalene? A. No, surely not.

"Q. Are there now in force, and were there in force [780] in June and July 1952, any general laws, rules or regulations in the Netherlands concerning loading, stowage and carrying of dangerous cargoes on vessels? A. Yes, sure.

"Q. Will you state for us please what those laws were, and identify them? A. I am referring to what we call the 'Schepenwet.' (pointing to Beerman Exhibit 2 for identification).

"Q. Will you tell us what part or portion, and identify them please, of that law refers to dangerous cargoes? A. On the strength of the Schepenwet the Crown has issued the Schepenbesluit. The Schepenbesluit in force in June 1952 was the Schepenbesluit issued the 26th of November 1932, Staatsblad 563.

"Q. I notice that you have yourself produced here and have among your papers a book to which you have just referred and which you are using and which down in the lower right hand corner has on its cover after the word Zwolle the year 1950. Is this book which I now show you the same as the book to which you have referred and which you have produced? A. Yes."

And I asked to have the book marked for [781] identification and it was produced and marked, your Honor.

"Q. Will you please identify what part or portion or section of this Van Rossem Exhibit 1 for identification covers the matter of dangerous cargoes, identifying it by section and also by pages of the book? A. As I told you the word naphthalene is never mentioned, but the only article which might be referred to is article 94 on page 146

and the following pages, and if naphthalene ought to be considered as a dangerous cargo it should be in section 4 of article 94."

We then produced, your Honor, and had marked the certified translation by what they call in Holland an official, or, rather, sworn translator of Section 94. It was then marked as Exhibit 2 for identification.

I will offer it in evidence now, your Honor.

Mr. Zisgen: Your Honor, that is the same translation which has already been received in evidence as Libelants' Exhibit 34-A.

Mr. Pyne: Then I don't need it.

Mr. Zisgen: You don't need another one.

Mr. Pyne: I will just mark this Libelants' Exhibit 34-A (marking).

[782] (Continuing to read:)

"Q. Subsequent to June and July 1952 was there any other law or decree adopted in connection with the matters we have been discussing, dangerous cargoes? A. This Schepenbesluit, I might call it a Royal Decree, has been changed into another one dated 31st December 1952, Government Gazette 679. This came into force on the 26th of January 1953.

"Q. I notice that you are referring to a book which bears on its cover in print in the lower right-hand corner after the word Zwolle the year 1954. Is that booklet the same as the book which has already been marked Beerman Exhibit 4 for identification? A. Yes."

(To Mr. Zisgen) Did you have that marked?

Mr. Zisgen: Beerman Exhibit 4 for identification, your Honor, was offered in evidence here as Libelants' Exhibit 37.

Mr. Pyne: (Continuing to read:)

"Q. Is there any place or portion of that booklet or any other matter in which it is stated when that law or decree came into force? A. Page 191 at the bottom, note 1."

Then we asked the interpreter for the record [783] to translate that note, your Honor, and he translated it thus:

"Fo the Netherlands: 26 January 1953 (Decree of 24 January 1953, Government Gazette 31)

"for the Netherlands Antilles: 1 July 1953 (Decree of 8 June 1953, Government Gazette 274). See also Notice to Shipping Nr 1/1952 hereinafter contained.

"Q. In your opinion as a matter of law, would or would not crude naphthalene come within the provisions of the law and decree which you have testified was in force in June and July 1952 concerning dangerous cargoes? A. I am not a chemist. The only thing I can say I could find is that perhaps according to the opinion of the chemists it might fall under sub-section 4.

"Q. If in the opinion of a chemist crude naphthalene came within the wording and provisions of that sub-section 4 would crude naphthalene then as a matter of law be required to be packed in any particular manner or way? A. You can read that for yourself, it should be packed in gas-tight packing.

• • •

[787] "Q. Assuming for discussion without granting or admitting that crude naphthalene is a product included in the definitions in sub-section 4 of article 94, would it then be permissible as a matter of Netherlands law to carry crude naphthalene otherwise than in gas-tight packing? A. No, of course not.

[788] "Q. Making the same assumption for discussion, namely that crude naphthalene is a product included

in the definitions of sub-section 4 of article 94, would any government official or government employee have authority under Netherland law through rule or regulation or practice or otherwise to permit crude naphthalene to be carried otherwise than in gas-tight packing? A. No.

"Q. Again making the same assumption for discussion, assuming that crude naphthalene is a product not within the definitions of article 94, then would any government official or government employee under Netherland law have the right or authority or any legal right to make rules or regulations concerning naphthalene? A. No.

"Q. Can you and will you tell us and point out to us if there is any section or sub-division of art. 94 on which you base that last statement? A. Dutch Government authorities have no power to act with respect to naphthalene on their own accord without taking into consideration the regulations of art. 94.

[789] "Q. What particular part or portion of that article would be involved in the question as to whether or not a Government official or Government employee would have the right to make rules or regulations concerning naphthalene? A. This is mentioned in subsection 13 of Van Rossem Exhibit 1.

"Q. Will you give us the page? A. Page 151.

"Q. What does it provide at that section 13? A. It provides that the most common commodities meant in the present section shall be listed. I refer to 'meant in the present section.'"

[790] "Q. Is there any other section of that art. 94 which would bear on this question of the right or authority of any Government official or government employee to make rules or regulations concerning napthalene? A. Sub-section 11A.

"Q. That sub-section 11A would have what effect as a matter of Netherlands law in your opinion insofar as concerns articles or products with respect to which the officials or employees could make regulations? A. I refer again

to the words 'meant in this section', the last words of 11A.

"Q. Under Netherlands law as in existence in June and July 1952, was there any rule or regulation requiring products or goods referred to in art. 94 to be labeled or marked in any way? A. I don't think so, I think the first regulation about marking is later.

"Q. You say that you do not think so. Can you tell us definitely if in your opinion, under the law existing in June or July 1952, there was any such regulation concerning labeling or marking?"

Mr. Pyne: Mr. Van Rossem, the record shows, then consulted a book, and the question continued:

"Q. You are now referring to the 1954 edition [791] identical with Beerman Exhibit 4 (Libelants' Exhibit 37). My question has been limited thus far to the 1950 edition, copy of which we have marked Van Rossem Exhibit 1. A. I don't think so. That was my answer.

"Q. Now will you tell us whether or not at the present time there is any law, rule or regulation with respect to labeling or marking goods or products referred to in article 94? A. Yes. That is the Notice to Shipping No. 5-1952 of 19 November, 1952, Government Gazette 1953 No. 11, quoted on page 478 of the 1954 edition.

"Q. Of Beerman Exhibit 4, is that correct? A. Yes."

Mr. Pyne: I asked the interpreter to make an English translation of that notice, your Honor. It was marked Exhibit 3, the English translation of it, and I will offer that English translation in evidence. Do you want a copy of it, Mr. Longley?

Mr. Longley: I have it. This is something like a year after our voyage. I do not know what the significance of it is.

The Court: What light does it throw on it, Mr. Pyne?

Deposition of Dr. W. N. E. Van Rossem

Mr. Pyne: It will definitely show as we take [792] it in later that this opinion expressed by Mr. Beerman, and which was a controversial matter, was based on this law in 1954 when it came into effect; and even further than that——

The Court: In view of that offer of proof, I will accept it.

Mr. Pyne: We will further expect to prove with this, your Honor, and further things, that that law to which Mr. Beerman referred never in fact was published, therefore never in fact adopted.

(Marked Petitioner's Exhibit U.)

Mr. Pyne (Continuing reading):

"Q. When did that particular regulation which you have identified and which has been marked Petitioner's Exhibit U come into force? A. It must have come into force a few days after the 19th of November 1952.

"Q. You previously referred to sub-section 13 of art. 94 of the decree in force in June and July 1952, which instructs the Minister to issue a book on Dangerous Cargoes. Had any such book been issued or published up to and including July 1952? A. No.

"Q. Has any such book been issued or published [793] up to the present time, either under that royal decree or any other? A. No.

"Q. Does the decree which you have testified came into force and effect in January 1953 contain a similar or identical provision as that of sub-section 13 of the decree in force in June and July 1952? A. Sub-section 15 of art. 99 at page 166 of Beerman Exhibit 4 (Libelants' Exhibit 37).

"Q. Up to the present time has any such book been issued or published by the Minister under that decree? A. No.

"Q. Under Netherlands law is there any procedure required which must be followed to give legality or binding

force and effect to any such book or any portion of any such book?"

Mr. Zisgen: I object to that, your Honor, unless Mr. Pyne specifies the time about which he was inquiring—which he then did.

Mr. Pyne: The question was repeated right after that, your Honor, specifying the time.

(Continuing reading:)

"Q. Is there under Netherlands law in your opin- [794] ion any required procedure which should have been and was required to have been followed in June and July 1952 and also up to the present time, in order to give legality or binding force or effect to any such book or publication or any portion of any such book as referred to in section 13 of art. 94 or section 15 of art. 99? A. As we are living in a civilized country and a democratic country, not a single regulation issued by any Dutch Government official can be binding upon the people unless published. As regards acts and royal decrees this has been expressly laid down in the law. As regards ministerial decrees there is no such legal provision, because it has for a long time been maintained that a minister had no power to give a binding decree. This view has gradually changed, but it was then omitted to make a special law equal to the act on acts and royal decrees. That, however, a ministerial decree, like an act and a royal decree, must be published in order to be binding, we consider here as a matter of course and has moreover been stated by a decision of the Supreme Court of the 24th January 1936, published in the Jurisprudence of 1936 under No. 490.

"Q. Will you state for us whether or not as a matter of law in your opinion the same law to which you [795] have just referred applies to regulations of the Inspector General of Shipping or any sub-inspector? A. A fortiori.

"Q. You previously referred to sub-section 11 of art. 94. Is there any similar or the same provison in the decree

which you stated came into force in January 1953 and if so, will you identify that? A. No. 12, page 164 of Beerman Exhibit 4 (Libelants' Exhibit 37).

"Q. Is that sub-section 12 of art. 99? A. Yes, it is.

"Q. Under that sub-section 12 of art. 99, the January 1953 decree, have any such regulations been issued and published, and if so, can you identify one or two as examples? A. You may find them at page 468 and following pages of Beerman Exhibit 4 (Libelants' Exhibit 37)."

Mr. Pyne: Has Beerman Exhibit 4 been marked in evidence?

Mr. Zisgen: Yes, it has, as Libelants' Exhibit 37; and I am waiting for the translation of Article 99, which will be 37-A.

Mr. Pyne: May I substitute Libelants' Exhibit 37 in that last answer, your Honor, in place of Beerman [796] Exhibit 4.

"Q. Do any of those published regulations refer to naphthalene by name? A. No.

"Q. As a matter of Netherlands law, rule or regulation, is the master or the owner or any carrier by vessel under any duty or obligation to notify any Government official, Government employee or Government office when dangerous goods are being or expected to be or have been loaded?

"I will add to that question whether there was any such duty or obligation at any time?

"A. No.

"Q. Is there any such obligation on any party? A. Yes, on the shipper.

"Q. In June and July 1952 can you point out the provision of the decree or law so requiring? A. No. 12 of the old Schepenbesluit, page 150, of art. 94."

Mr. Pyne: I believe that has already been marked, has it not, Mr. Zisgen, Libelants' Exhibit 34?

Mr. Zisgen: According to the deposition there was a translation of it marked as Van Rossem Exhibit 3. You just offered it in evidence a few moments ago as [797] Petitioner's Exhibit U.

Mr. Pyne: It is the same as Libelants' Exhibit 34, isn't it?

Mr. Zisgen: No, Petitioner's Exhiibt U. You just offered it.

Mr. Stonebridge: Your Honor, I object to the admission of that until such time as I am clear about the numbering of the exhibits. If this Petitioner's Exhibit U is the letter which was marked for identification—this is the letter that caused the trouble.

Mr. Zisgen: No, it is not.

The Court: The notice of shipping is U.

Mr. Stonebridge: Oh, it is not. Then the objection is withdrawn, your Honor.

Mr. Pyne: I will repeat that question, your Honor, and refer to the present marking of exhibits:

"Q. In June and July 1952 can you point out the provision of the decree or law so requiring? A. No. 12 of the old Schepenbesluit, page 150, of art. 94."

It has been marked previously here today, your Honor, Petitioner's Exhibit U.

The Court: I am not getting that. Didn't he say July 1952?

[798] Mr. Pyne: That is right, your Honor.

The Court: Then that which is called to my attention was not issued until November 19, 1952.

Mr. Pyne: I think what he is saying is that there was a similar provision in a prior statute. That is what he is stating. It is just repeated in this statute.

(Continuing reading:)

"Q. Under the January 1953 decree, can you tell us whether there is any such or similar provision? A. No. 13.

"Q. You now refer to No. 13 of art. 99 of Beerman Exhibit 4 (Libelants' Exhibit 37) page 166.

"Under Netherlands law, is there any provision which distinguishes or defines passenger vessels from cargo vessels? A. Yes. Passenger vessels are defined in art. 1 of the Schepenwet, 1954 edition page 19, Beerman Exhibit 4 (Libelants' Exhibit 37).

"Q. Please identify the similar provisions in the 1950 edition. A. Page 18 of Van Rossem Exhibit 1 for identification.

"Q. To what flag or flags of the vessels does this subsection to which you have last referred of these [799] two laws apply? A. The whole law does apply only to Dutch vessels and in consequence not to foreign vessels.

"Q. That of course is true then also of sections 94 and 99? A. Sure.

"Q. What is the definition or distinction under the law to which you have referred between a passenger and a cargo vessel, under Netherlands law? A. A passenger vessel has been defined at the pages I mentioned as every ship that by her owner is intended to carry more than 12 passengers or a ship that actually carries more than 12 passengers."

Mr. Pyne: Here we come, your Honor, to the part that was taken as testimony of Mr. Van Rossem, in rebuttal of that portion of Mr. Beerman's testimony and Exhibit 3.

Mr. Zisgen: It is the Exhibit 3 to which Mr. Pyne refers, which is the letter to which he and Mr. Stonebridge objected, and which your Honor ex-

cluded from evidence, so I object to the rest of this testimony. It has no bearing as long as the letter itself is not in evidence.

• • •

[807] Mr. Pyne: Your Honor, we were referred yesterday in the testimony to Section 94 of one of the Dutch statutes. That was the statute in force at the time of this particular accident, and we also referred to Section 99 of a statute which came into force in January of 1953.

Section 94, in translation, was marked in evidence by Mr. Zisgen, and in his testimony a space was reserved as Libelants' Exhibit 37-A for the translation of Section 99, and if I may present that now, your Honor, that translation—it wasn't available to either of us when Mr. Zisgen was reading Dr. Beerman's testimony.

[808] Mr. Pyne: 37 was the Dutch, your Honor, and 37-A is the translation.

The Court: Section 99.

• • •

Mr. Stonebridge: Yes. (Reading.)

"Q. During your direct examination, if I recall correctly, you stated that Dutch law applies only to Dutch vessels. Are there any exceptions to that general statement? A. I meant that this Dutch law applies to Dutch vessels.

"Q. The Schepenbesluit that has been referred to in the course of your testimony? A. That is stated in art. 2 of the Schepenwet. I might refer you to art. 69 subsection 1. Here it is stated that the officials of the Shipping Inspection are entitled to detain a vessel of foreign nationality in certain cases mentioned in the article. Do you want a translation?

[809] "Q. Would the interpreter please translate on the record art. 69 subsection 1?"

Deposition of Dr. W. N. E. Van Rossem

The translation follows:

"Apart from the provisions of art. 67 a Shipping Inspectorate official is empowered to detain a vessel of foreign nationality which does not in pursuance of articles 2 or 2b fall under the present act, and which by reason of the unsound condition of the hull, the gear or the equipment, or as a result of bad stowage endangers the persons on board.

"Q. So your earlier testimony is in effect a statement that generally speaking the Schepenbesluit does not apply to foreign vessels? A. Correct."

* * *

"Q. Are you a member of the Maritime Law Association of the Netherlands? A. No, I am not.

"Q. You agree, do you not, that the representative [810] of the Kingdom of the Netherlands signed the international convention for the unification of rules relating to bills of lading known as The Hague Rules? A. Yes.

"Q. I understand that the Kingdom never ratified that convention. Is that correct? A. That is correct.

"Q. Is it not a fact that in general the Maritime Law of the Netherlands is based upon the same principles as those embodied in The Hague Rules? A. It is.

"Q. Those principles are embodied, are they not, in Articles 468 and 480 of your Netherlands Maritime Code? A. Yes.

"Q. I show you a book which has been marked as Beerman Exhibit 1 for identification."

What is Beerman Exhibit 1 for identification, Mr. Zisgen?

Mr. Zisgen: It is now Libelants' Exhibit 33.

Mr. Longley: (Reading)

"Are you familiar with that book? A. Yes, I have seen it several times.

"Q. Do you agree that speaking generally it is a fair translation? [811] A. I never checked it.

"Q. Do you have any reason to doubt that it is a fair translation? A. No.

"Q. Do you agree that under the law of the Netherlands the parties to a contract for the carriage of goods by sea may lawfully provide that their contract may be governed by The Hague Rules in whole or in part? A. Yes.

"Q. And that is true, is it not, whether the contract is for the carriage of goods to the Netherlands, or from the Netherlands? A. They always may.

"Q. It is a fact, is it not, that under the Commercial Code of the Netherlands, the Maritime Law, the carrier is under an obligation to load and stow the goods properly and carefully? A. Yes.

"Q. And that is true of all goods which he accepts for carriage? A. Yes.

"Q. That obligation applies to goods carried on deck with the shipper's permission? A. Yes.

[812] "Q. And you agree, do you not, that the carrier may not by contract exempt himself from that obligation? A. He surely may not when the ship is outward bound.

"Q. And by outward bound do you mean bound from the Netherlands to a foreign port? A. I refer to article 517d.

"Q. As printed in Beerman Exhibit 1"—now Libelants' Exhibit 33—"for identification, is it not? A. Yes, page 91.

"Q. And is it not a fact that in determining whether a carrier is living up to the obligation of careful proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves? A. Sure.

"Q. And is it not also a fact that in determining whether the carrier is living up to that obligation, the Netherlands courts take into account the whole stowage of all the goods on the ship? A. Sure.

Deposition of Dr. W. N. E. Van Rossem

"Q. And that includes, does it not, goods which may have been stowed on the ship at prior ports including foreign ports? [813] A. Yes. You mean that the stowage in a foreign port . . .

"Q. If the ship comes to a Dutch port with goods stowed at foreign ports on board . . . A. And other goods are stowed in Dutch ports . . .

"Q. Yes. A. Oh yes.

"Q. And then, to sum up our exchange, the Netherlands courts do take into account the goods that have been stowed at those foreign ports and the goods stowed at the Dutch ports? A. Yes.

"Q. Now there is a royal decree relating to the stowage and carriage of dangerous goods and that is the decree of November 26, 1932, as amended on December 27, 1939, is it not? A. Yes.

"Q. Check that if you wish. A. November 26, 1932, there was . . .

"Q. And that was amended December 27? A. Replaced by another one, that is not the same.

"Q. It was the replacement of December 27, 1939? A. No, surely not.

"Q. Let us go back. I asked you whether there was [814] a decree of November 27, 1939, relating to dangerous goods. Your answer was yes. Then as I understood you that was replaced. A. In 1952. The 31st of December 1952 a new Schepenbesluit came into force.

"Q. As of June and July, 1952, it was the decree of November 26, 1932, as amended December 27, 1939, which was in effect? A. It has been amended several times, in 1936, 1937, 1939, 1940, 1947, 1948, 1949.

"Q. And as amended up to June and July 1952 and as in force at that time that decree contained a definition of dangerous goods other than liquids, did it not? A. Yes, a definition. I don't know whether I must say definition, but it mentions in art. 94 sub 4 goods which are not liquids, solid goods.

Deposition of Dr. W. N. E. Van Rossem

"Q. And in that part of it to which you have just referred, what does it say?

"Mr. Stonebridge: We have a certified translation of that sub-section.

"Q. And the portion to which you referred is sub-section 4 of sec. 94 in that translation, is it not? A. Yes.

[815] Mr. Longley: I think at this point it might be well to read Subsection 4 of Section 94.

"Solid substances which are easily inflammable or which when heated to 70 degrees Celsius may evolve combustible gases, must be carried in gas-type containers. These substances must be stowed at a safe distance from bulkheads and pipe lines which may be exposed to heating. If stowed on deck they may not be exposed to direct rays of the sun. The substances mentioned in the present subsection and substances mentioned in subsection 156 and 157 may not be stowed in the same spaces."

(Continuing reading)

"Q. You told us did you not that you are not a chemist? A. That's right.

"Q. You are not in a position to say of your own knowledge whether naphthalene is easily inflammable, is that correct? A. I know it is, but . . .

"Q. You were not in a position to say of your own knowledge whether naphthalene when heated to 70°C may evolve combustible gases? A. I never made a check but I take it for granted.

[816] "Q. You agree do you not, that whether naphthalene is inflammable is a matter of fact? A. I think so.

"Q. And it is also a matter of fact whether naphthalene will evolve combustible gases when heated to 70°C? A. I am not familiar of American law, but I would call it a matter of fact."

I should say parenthetically that "centigrade" and "Celsius" are the same. I did not know it until this case —"Celsius" and "Centigrade" are the same thing.

Mr. Pyne: That is right.
Mr. Stonebridge: Agreed.
Mr. Longley: (Reading)

"Q. You agree, do you not, that the mere practice of persons who deal with naphthalene does not ultimately determine either of those facts? A. I agree.

"Q. Now, the Netherlands is a party to the International Convention for the Safety of Life at Sea signed at London in 1929 and 1948, is it not? A. I don't remember.

"Q. You have told us that you know of no regulation [816a] in the Netherlands covering the stowage of naphthalene by name? A. Yes.

"Q. In instances in which the courts are called upon in the Netherlands to determine whether or not the stowage of a commodity not mentioned by name in the regulations is proper or not, what sources do they go to for information? A. To experts."

[817] "Q. And to what kind of experts? A. Well, cargo experts, naval experts, retired captains.

"Q. All three? A. A retired captain is a naval expert.

"Q. Do they also refer to commentaries? A. Sure.

"Q. And to books dealing with different kinds of commodities involved in the particular question that they are called upon to determine? A. They consult commentaries.

"Q. Do you yourself know of any commentaries that they have used? A. The best known commentary in Holland is Noordraven.

"Q. Is that the name of the author? A. Yes.

"Q. What is the name of the book? A. Het Beladen.

"Q. You are familiar with that book? A. I have consulted it several times.

"Q. You know that the courts have consulted it? A. I take it for granted that they consult this book when they are considering their decision, but that [818] is mostly not mentioned in the decision.

"Q. Het Beladen contains a reference to coal tar products, does it not? A. I did not consult it now. I don't know.

"Q. Have you ever known courts of the Netherlands to consult Aeby's book on dangerous goods? A. I don't know whether or not they do."

Mr. Longley: Now the next goes into Mr. Zisgen's cross-examination of what I call chit-chat, so I assume that I should not read that.

Going now to the middle of page 23:

"Q. Now as I understood you the only authority in which any Dutch shipping official could make regulations concerning dangerous goods was to be found in July 1952 in sub-section 13 of art. 94, is that correct? A. No, that is not correct.

"Q. That is what I understood you to say. A. That is incorrect.

"Q. What are the facts? A. That the whole of the article 94 is dealing with this matter. Sub-section 13 is only a part of it.

"Q. You do not consider that under Netherlands law there may be authority in shipping officials to make regulations to carry into effect let's say the provisions of [817] the Hague Rules? A. No, surely not. We are not in a Hitler country. There should be an act.

"Q. And what do you mean by act? A. An act of Parliament.

"Q. What I might call a statute? A. That's right.

"Q. Am I correct that there are in the Netherlands first these acts of Parliament, second Royal Decrees? A. If provided for by an Act of Parliament.

Deposition of Dr. W. N. E. Van Rossem

"Q. And only if provided for in an Act of Parliament. What is a ministerial decree? A. That is something the Act or Royal Decree has delegated a certain power in the minister without the Crown.

"Q. Then a ministerial decree would be one which did not require the Crown's assent? A. That is correct.

"Q. Then beneath those ministerial decrees or regulations—— A. If they are provided for in a higher region.

"Q. So that in a sort of hierarchy we might have an Act of Parliament which authorizes the Crown to issue a decree —— [820] A. Or the minister.

"Q. Or that Act of Parliament might authorize the minister to issue a decree without royal consent? A. Yes.

"Q. Similarly, I take it, a Royal Decree if authorized by a statute of Parliament might authorize a minister to issue a decree in accordance with the Royal Decrée or the Statute. A. That is right.

"Q. Then in turn in a proper case the ministerial decree might authorize an appropriate official to issue regulations under it, is that correct? A. I see no objection, however I don't know an example by heart.

"Q. You know of no legal reason why that situation could not exist? A. No.

"Q. In other words, so long as you have at the top of the pyramid an Act of Parliament, there is no prohibition in the law of the Netherlands against delegation on down through a Royal Decree, a ministerial decree and the regulations to lower officials to exercise certain powers, is that correct? A. Yes, I think that is correct. The official may not be too low, but——

[821] "Q. That is a question of degree. A. A question of policy. For instance here the Royal Decree, not a ministerial decree, has delegated certain powers to the Inspector General of Shipping.

Deposition of Dr. W. N. E. Van Rossem

"Q. That is what I was coming to. A. Mind you, it is the Royal Decree which has delegated power.

"Q. To the Inspector General to make regulations? That was the situation in July 1952? I take it that there is no question that in June and July 1952 the Inspector General of Shipping had the power to make regulations with respect to the carriage of naphthalene. A. No, that is not correct. Only if naphthalene is meant in article 94.

"Q. Now that puzzles me a little. A. And if it is meant, it would come under article 94 sub-section 4, and as sub-section 4 says that the solid goods meant in that sub-section must be packed in gas-tight containers, of course the Chief Inspector of Shipping is not entitled to make a deviating regulation.

"Q. That is your conclusion? A. No, that is not my conclusion, that is certain.

"Q. You agreed with me that you were not a chemist? A. I will maintain that up to my death.

[822] "Q. And you agreed, did you not, that whether or not naphthalene was inflammable was a question of fact? A. Yes.

"Q. And you agreed, did you not, that whether or not naphthalene at 70° C may evolve combustible gases is a question of fact? A. Yes.

"Q. I put it to you again that your earlier answer is your conclusion, is it not? A. My earlier answer to what?

"Q. Your earlier answer that because naphthalene is not required to be packed in gas-tight containers, it is not within the provisions of sub-section 4 of article 94. A. My answer is that if the fact is that naphthalene falls under the wording of sub-section 4, then it should be packed and it may only be packed in gas-tight containers and nobody is entitled to deviate from that rule.

"Q. And that is the whole basis for your opinion that naphthalene is not within sub-section 4 of article 94? A. I have no opinion on that subject as I am not a chemist, but if

the fact is that it falls under that sub-section, then it must be packed in gas-tight containers. No exception.

"Q. Let us assume that that is so. That is not [823] quite the same thing, is it, as your earlier statement that because it is not packed in gas-tight containers it is not within the sub-section?"

• • •

You can conceive of a situation, can you not, in which shippers and carriers both ignore or violate a statute or a regulation? A. I can conceive that they do one or twice, but not regularly.

"Q. You do not want us to understand that under the law of the Netherlands one or two violations of a statute are crimes but more than that are not? A. Of course not, but one or two might not be discovered, that is what I mean.

"Q. Your point is simply that the existence of a practice, an invariable practice over a long period of time, itself establishes that the practice does not violate the law? A. No, the practice may not violate the law.

[824] "Q. I am not sure that I am quite clear what your last answer means. A. When there is a law, a deviating practice can never be stronger than the law, can never put aside the law.

"Q. And you reason from that, if there is an invariable practice which has continued for a long time, that in itself is conclusive evidence that there is not a violation of law involved in the practice, is that correct? A. I think so.

"Q. You told us with respect to the Notice to Shipping which has been marked Van Rossem Exhibit 3 for identification,——"

Mr. Longley: That is what exhibit now?

The Court: It is now Petitioner's Exhibit U.

Mr. Longley: (Continuing:)

"——Petitioner's Exhibit U, that it must have come into effect shortly after November 19, 1952. What did you mean by saying 'must have'? A. Because no regulation can possibly come into effect before it is born.

"Q. And what did you mean by saying 'before it is born'? A. It has a date, a Notice to Shipping dated [825] November 19, 1952, cannot possibly come into effect on the 18th.

"Q. Your point is simply that the regulation has no force until it is published in printed form, is it not? A. Not only in printed form, but published in the proper way, in the Government Gazette, as this has been published in the Government Gazette.

"Q. That is the Staatscourant? A. Yes.

"Q. Is that the only way in which regulations on any subject are published in the Netherlands? A. There are two ways, the Staatsblad and the Staatscurant. The Staatsblad is for acts of Parliament and royal decrees relating to general subjects. There are royal decrees which relate to a special subject such as nomination of a judge or government official, those are published only in the Staatscurant, not in the Staatsblad.

"Q. And in your view no law, no statute, no decree, no regulation can have any binding force in the Netherlands unless published in one or the other of those two publications. A. That is right.

"Q. You told us that acts of Parliament and royal [826] decrees were expressly required to be published. Can you give us the reference to the law or decree so requiring? A. Constitution, art. 74. It says that laws have to be made for the promulgation of acts of Parliament and royal decrees.

"Q. And as to ministerial decrees I understood you to say that there is no such express requirement. A. There is an express requirement but not in an act.

"Q. That express requirement appears where? A. That is stated by the Supreme Court as I mentioned.

"Q. That is the decision in Jurisprudence 1936 No. 490. Are you familiar with the doctrine stare decisis? A. I know what it means, that you are governed by decisions.

"Q. Yes. The doctrine of stare decisis is not followed in the Netherlands, is it? A. No, it is not, at least not as such.

"Q. And I take it, Doctor, that what you mean is that, while the courts may not be legally obliged to follow earlier decisions, in practice they accord them respect? [827] A. Not only respect but they accord them a very considerable degree of guidance.

"Q. And it is on the basis of that decision in 1936 that you base your opinion that ministerial decrees and regulations must be published in one or the other of the publications which you mentioned in order to have binding force? A. Not only on that decision. That decision only reflects the opinion of the Dutch law people.

"Q. The Dutch lawyers? A. The judges as well. Of the Dutch people who have studied law. That is what I mean.

"Q. That is merly an opinion, is it not? A. Oh, no, that is not an opinion. It is said so——

"Q. Perhaps I have not made myself clear. When I said that is only an opinion, I was referring to your statement that the Dutch lawyers and Dutch students of the law held that view. A. Yes, that is right.

"Q. Now you told us, that section 12 of art. 94 imposed a duty on the shipper in July 1952 to notify some Government official when dangerous goods were to be carried, did you not? [828] A. He has the duty to notify if the loading happens in this country, to notify the head of the District of the Shipping Inspection. That is what is said there.

"Q. What is your understanding of the purpose of that requirement? A. Only to safeguard the people.

"Q. And by people I suppose you mean the master, the crew and any passengers who might be there? A. Yes.

Deposition of Dr. W. N. E. Van Rossem

"Q. The danger that that requirement was designed to avert would exist equally whether the ship were Dutch or of foreign nationality, would it not? A. Of course it would.

"Q. Would it be your opinion that that duty existed whether the shipment of the particular goods was to be made on a Dutch ship or a foreign ship? A. No, it is not only my opinion, it is a fact, that the whole law only concerns Dutch ships, no matter where they are, but Dutch ships.

"Q. You told Mr. Stonebridge, as I understood you, that the shipping officials were authorized to detain foreign vessels from sailing. A. Yes.

"Q. If as a result of bad stowage their condition [829] would endanger the persons on board? A. Yes.

"Q. You told me I thought that the purpose of the regulation requiring shippers to notify the shipping officials when dangerous goods were to be shipped was for the safety of the persons on board? A. Yes, I did.

"Q. Then I don't understand why you seem to feel that this obligation imposed by sub-section 12 of art. 94 is not applicable when the goods are to be shipped on foreign ships. A. My conclusion is that the law does not say so, but nevertheless according to art. 69, sub-section 1 of the Schepenwet, if the Shipping Inspection discover anything mentioned in that sub-section, they are entitled to detain the vessel, and moreover the local harbormaster has an analogic power, because he looks after the safety of the harbors. So if any ship by the way of stowing should endanger the harbor he has the right to detain it as well.

"Q. And both of those authorities would be entitled to exercise their power of detention even though the shipper had not notified them that dangerous goods were to be shipped? [830] A. Yes, that is correct.

Deposition of Dr. W. N. E. Van Rossem

"Q. The danger both to the persons on board and to the safety of the harbor would exist equally whether—— A. Yes, of course."

• • •

"Q. According to your view, there has not been ever any regulation regarding the carriage of naphtha- [831] lene? A. Yes.

"Q. And there are not now? A. Correct.

"Q. Why, if that is so, would the Shipping Inspector of the Second District send to Van Nievelt Goudriaan & Company a copy of the proposed regulations which has been marked Van Rossem Exhibit 5d?"

Mr. Stonebridge: I object, your Honor. I do not believe that 5d has been put in evidence in this trial.

Mr. Longley: It is going to be offered in evidence right now.

Mr. Stonebridge: I object to its introduction.

Mr. Longley: I will now offer in evidence a letter addressed to Van Nievelt Goudriaan & Company, which is the general agent at Rotterdam of the Black Diamond Steamship Company, from the Shipping Inspector of the Second District, dated May 3, 1954, with the enclosure. The two have heretofore been marked for identification Van Rossem's Exhibits 5c and 5d.

Is that the original that has been so marked?

Mr. Zisgen: Yes, that is correct.

Mr. Longley: This is a translation that I [832] have in my hand.

• • •

[847] "Q. Even though you are not a chemist, you will agree I think that any dangerous characteristics which naphthalene will have when these proposed [848] regula-

tions are published, it has now? A. The danger is not determined by any regulation, of course not.

"Q. The same is true as of June and July 1952, is it not? A. Yes, it has always been true and it will always be true.

"Q. And yet in your view for a substantial period of time the Inspector General of Shipping, by delaying the issuance of the regulations which are to be published in this book—— A. Beg pardon, the minister.

"Q. Very well, the minister by delaying the issuance of the regulations which are to be published in this book, has made it possible for shippers and carriers alike to expose persons on board ships and the harbors in which those ships are loaded to whatever dangers there may be in naphthalene, without any hindrance from him. A. Yes, sure.

"Q. Does not that seem to you to be a strange attitude on the part of an official charged with the duty of preserving safety? A. I take it that apparently they don't [849] consider the danger very large, or even they don't see any danger perhaps.

"Q. If they don't see any danger, then what is the statutory authority for the proposed issuance of the regulation? A. The statutory authority must be in first instance the Schepenwet and in the second instance the royal decree, and if naphthalene does not fall under any regulation of art. 94 or 99, not a single authority is entitled to make any regulation concerning naphthalene.

"Q. The fact that the shipping authority proposes to issue a regulation concerning naphthalene indicates a determination by the authority that it is entitled to issue such a regulation, does it not? A. It looks like they think they are entitled and that is perhaps why they quote art. 99, overlooking the fact that art. 99 mentions gas-tight containers.

"Q. And that determination of theirs, whether it is correct or not, in turn involves a determination that naphtha-

lene falls within the definition of dangerous goods, does it not? A. I can't say that, for as I pointed out before there is a discrepancy between the reference to art. 99 on the one side and the close-woven bags [850] on the other side, and at last, if the minister should mention in his book to be published any regulation which is not in accordance with either the act or the royal decree, it is the duty of the courts to decide that this regulation is invalid.

"Q. You told Mr. Stonebridge something about art. 69 sub-section 1 and you were referring to the 1954 edition marked Beerman Exhibit 4"—that is now Libelants' Exhibit 37, and the translation is 37-A—"Can you tell me whether in July 1952 there was a similar provision or a comparable provision to the one to which you referred? A. Quite the same I think. It is quite the same wording.

"Q. Do you not agree that the formulation of regulations to be published in the future concerning the stowage and carriage of naphthalene in itself is proof of some crystallization of opinion as to the proper way of handling it? A. No, that goes too far.

"Q. You think that is purely an experimental affair? A. Yes.

"Q. Do you not agree that negligent stowage of cargo, even though the negligent method is not [851] specifically prohibited by a regulation, is a violation of your Netherlands maritime law? A. Yes. Not of the penal law but of the commercial code.

"Q. Embodied in Beerman exhibit 1? A. Negligent stowage is prohibited, of course.

"Q. I am asking you to assume negligence in the question I put to you, and I am asking you, if it is not a fact that negligent stowage violates the Netherlands Code of Commerce. A. Yes."

• • •

Mr. Longley: If the Court please, I will withdraw my objection to the reading into the record of the testimony on which your Honor ruled yesterday.

The Court: Do you care to read the testimony which was excluded yesterday——

Mr. Longley: I withdraw my objection.

Mr. Pyne: Yes, your Honor, we will put the whole thing in.

• • •

[852] Mr. Stonebridge: Your Honor, do I understand correctly that as a result of Mr. Longley's withdrawal of his previous objections the testimony of Dr. Van Rossem will be read in completely, and all of the exhibits referred to therein will be admissible without objection to him?

Mr. Longley: That is correct, so long as my letter is in, too.

Mr. Stonebridge: I was going to add that I withdraw any objection that I may have made to the introduction of Beerman Exhibit 3.

The Court: Very good.

Mr. Pyne: We take the same position, and do the same thing, your Honor. It comes down to what we offered to do at the outset.

Mr. Longley: Yes, I guess so.

The Court: I suppose that it is expecting more than can be expected of human beings not to express a little exultation from time to time. I will not comment.

• • •

[853] "Q. I show you, Mr. Van Rossem, a letter which is dated 30 July 1954 "—which has been here marked Libelants' Exhibit 35 for identification—" and ask you whether or not at my request you made any investigation with respect to that letter and its contents? A. Yes, I did."

Mr. Longley: Before we go on, I should now offer this letter in evidence. It is marked for identification solely heretofore.

(Libelants' Exhibit 35 received in evidence.)

Deposition of Dr. W. N. E. Van Rossem

Mr. Longley: Perhaps since it is now in evidence, I should read it to your Honor.

The Court: Yes, I would like to get the continuity.

Mr. Pyne: The translation is attached.

Mr. Longley: It is from the Inspector General for Shipping——

Mr. Pyne: It is signed by a subordinate, who signed it. It is from that office but it is not signed by the Inspector General.

Mr. Longley: Well, it is signed "Inspector [854] General for Shipping, per B. E. Van Bruggen."

It is dated July 30, 1954:

"Reference: S.S. 'Black Gull' "——

It is on the letterhead of the Inspector General of Shipping, written from The Hague.

"In reference to your letter"——

The Court: To whom is it addressed?

Mr. Longley: To John Hudig & Son, Lloyd's Agents at Rotterdam.

"In reference to your letter No. 47631 Z/B of July 23, I inform you that to my regret it is not possible to make a statement before the American Consul with regard to the regulations in force in this country relative to the transport of naphthalene.

"I therefore will limit myself to confirming that at the time of the loading of the S.S. 'Black Gull,' in July 1952 in the Netherlands, the following regulations were in force regarding the transportation of naphthalene:

" 'Napthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the contents is completely obviated.

Deposition of Dr. W. N. E. Van Rossem

[855] " 'Stowage may be on deck or under deck.

" 'On deck, the naphthalene must be protected from the effects of the sun's rays and kept at a distance from the crew's quarters.

" 'Below deck in a well-ventilated dry space.

" 'In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflammable gases, on substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naphthalene).' "

Mr. Pyne: Now, may I repeat, your Honor:

"Q. I show you, Mr. Van Rossem, a letter which is dated 30 July"—now marked Libelants' Exhibit 35"—"and ask you whether or not at my request you made any investigation with respect to that letter and its contents? A. Yes, I did.

"Q. When and where did you make that investigation? A. I made that investigation last Saturday 20 August 1955 and I saw the Inspector General at his office at The Hague.

[856] "Q. Which inspector was it that you saw there at that time? A. The Inspector General himself was on holidays, I saw the second in command, called Mr. J. Metz. I saw him together with Mr. Alexander Rein from Oslo.

"Q. Will you tell us what was done and said on that occasion? A. I showed him this letter and I asked him where the quotation in that letter came from, as I did not find that quotation for myself and I very much doubted whether it was genuine. The only thing he could produce, and he produced it at once, was a printer's proof of what was meant to be part of the book to be issued according to art. 99 sub-section 15 and that printer's proof showed alterations in pencil. Then I drew his attention to the fact that this printer's proof mentioned art. 99, so it must have been

issued after the Schepenbesluit which came into force in January 1953 came into force, so that this printer's proof could have no bearing on the period when the disaster of the Black Gull took place in the summer of 1952. Moreover, looking through the printer's proof it was obvious that the wording of that proof was by no means [857] identical to the wording of the quotation in the letter of July 30, 1954," —Libelants' Exhibit 35.

That ought to be July 30—that is typographical.

Mr. Longley: Yes, that should be July 30.

Mr. Reporter, will you read the answer again?

(Record read)

Mr. Longley: You don't need to read our objections.

Mr. Pyne: Continuing with the witness's answer at the bottom of page 13:

"Mr. Metz admitted the correctness of my remarks. And then he left the room, telling me that he wanted to look for the original of the said quotation. After five minutes he came back, telling me that there was none available, but that one of his employees was continuing the investigation. Sometime later on an employee entered the room and showed to Mr. Metz a sheet of paper mentioning several words with the"——

Mr. Longley: That should be "words."

Mr. Pyne: It is "goods" in mine.

Mr. Longley: So it is, but you do not want goods, do you?

Mr. Pyne: It doesn't matter.

Mr. Longley: It is "words."

[858] Mr. Pyne: (Continuing reading).

". . . mentioning several words with the initial N. One of them was naphthalene. The employee said that this was the only paper available concerning the period before the Schepenbesluit 1952 came

into force (Beerman Exhibit 4). On that sheet of paper was mentioned that naphthalene had to be packed"—there are some Dutch words and the translation is bags, wooden or steel barrels or boxes".

And then there are some more Dutch words—— ". . . and as to the stowage there was mentioned the following"—and then there are some Dutch words again and the translation is below—"on deck, or below deck, cool, well-ventilated, away from food and other articles for human consumption, and from living quarters, not together with substances coming under Section 94, Sub-sections 1, 5, 6, 7.

"Mr. Metz repeated that this sheet of paper was the only one available concerning the period before Beerman Exhibit 4 came into force,"——

Mr. Zisgen: That is Libelants' Exhibit 37.

Mr. Pyne: Libelants' Exhibit 37—"came into force, and he repeated again that he could not tell me, which did not surprise me, where the [859] quotation in Beerman Exhibit 3 came from."—which is Libelants' Exhibit 35.

"Then I asked him, is it true perhaps that what is mentioned in that quotation came into your mind or better in the mind of the Shipping Inspection only after they had heard of the disaster of the Black Gull and the cause of that disaster? A. To this question Mr. Metz replied without any hesitation: 'I cannot admit that nor can I deny it.' At the end of our conversation I asked Mr. Metz whether he was willing to put down some of his information in a letter addressed to me and then he said he was willing and he wrote to me this letter dated August 20, 1955."

Now I will offer that letter, your Honor, the Dutch original, with a certified English translation attached.

(Marked Petitioners' Exhibit V.)

Mr. Pyne: May I read the letter, your Honor—or would your Honor prefer to read it yourself?

The Court: I will read it.

(Mr. Pyne hands to the Court who examines.)

Mr. Pyne: (Reading)

"Q. In your recital, Dr. Van Rossem, of your [860] conversation with Inspector Metz, did you cover all of the important matters which now occur to you? A. Yes.

"Q. Then I ask you personally whether or not there was anything said as to whether or not there had ever been published any rule or regulation by the Inspector General concerning naphthalene and, if so, what was said in that connection?

"Did you have any conversation on that point with Inspector Metz as to whether or not anything had been published? A. We had a conversation on that point, but he admitted that nothing had been published.

"Q. Did you have any conversation with Mr. Metz, was anything said, and, if so, what by each of you concerning the question as to whether or not the printer's proof he showed you had been published? A. He emphasized that it had not been published, it was only a proof.

"Q. In the course of your investigation made at my request, did you learn or hear of any statement made by the Shipping Inspector of the Second District? A. Yes.

"Q. I show you what purports to be a copy of a [861] letter from that Inspector and a document attached, both bearing the date of 3 May 1954, and ask you whether or not that is the statement which you learned of or became aware of in the course of your investigation? A. Yes."

Mr. Longley: I offer the translation for identification.

Mr. Pyne: We have it—thank you.

Mr. Longley: Do you have the original in Dutch?

Mr. Pyne: Yes. I ask that that letter of 3 May—we have the original in Dutch and we will attach an English translation of it also—I offer that in evidence, your Honor.

(Marked Petitioners' Exhibit W.)

Mr. Longley: Perhaps the record should show that Petitioners' Exhibit W has heretofore been marked for identification as Libelants' Exhibit 44, which is the one your Honor ruled on just before the recess.

Mr. Pyne: Now, at the top of page 16:

"Q. Did you in the course of your investigation see or learn of any statement by the Rotterdam Harbor Master, Captain Van Leeuwen, with respect to dangerous goods or naphthalene? A. Yes, I did."

[862] Mr. Pyne: (reading)

"Q. Is this document I show you that paper? A. Yes, it is."

Mr. Pyne: I offer that paper in evidence, your Honor, in English.

(Marked Petitioner's Exhibit X.)

• • •

[863] "Q. In answer to one of Mr. Pyne's questions you referred to something called Shipping and gave a reference '1/1952'. What was that? A. I don't know what you mean.

"Q. I think that the reference came from note 1 at the bottom of page 191 in Beerman exhibit 4 for identification."

Mr. Zisgen: Now Libelants' Exhibit 37.

A. I referred to this note 1, I did, but only to show that the new Schepenbesluit came into force on January 26, 1953.—

"Q. What are the last two lines of page 191 of this exhibit? What do they say in English? My notes are not clear. A. 'As to the Netherlands Antilles: 1st July, 1953 (Decree of June 8, 1953, Government Gazette 274), look at notice to Shipping No. 1/1952, mentioned hereafter.'

"Q. What are these Notices to Shipping referred to here? A. *You can find them in the book,* all over it. They are regulations issued by the Inspector General of the Shipping.

"Q. Printed in Beerman Exhibit 4"—now Libelants' Exhibit 37—"is that correct? [864] A. Yes.

"Q. You told Mr. Pyne that under the authorities naphthalene did not fall within section 94 of the decree which was in effect in July 1952. What did you mean by the phrase 'under the authorities'? A. I think you are mistaken.

"Q. I will ask the reporter to read the question and answer to which I have referred.

> "Reporter reads: 'Q. I am asking you to assume that it is not and never has been packed in gas-tight containers. Would it follow in your opinion as a matter of law as to whether or not it could be said to fall under that section? A. To this I can only answer that apparently according to the opinion of the authorities it does not fall under sub-section 4.'

"My question is, what did you mean by 'the opinion of the authorities'? A. Of the Shipping Inspection for instance.

"Q. That is the authority to which you referred in your answer to that question? A. Yes, as well as the harbor Master.

"Q. And you based that statement on the investigation which you made on August 20th? [865] A. Not only on that.

"Q. Plus the letters which you received from the Inspector General at The Hague subsequent to August 20th and the letters from the Inspector of the Second District and from the Harbor Master, is that correct? A. Yes. I don't know whether this is complete but what you said is correct. I refer especially to the letter of May 3, 1954.

"Q. And that is the letter which has been marked Van Rossem Exhibit 5C and its enclosure Van Rossem Exhibit 5D, is it not?"

Those now being Petitioner's Exhibit W.

A. Yes. May I——

"Q. As far as I am concerned you have answered the question."

Mr. Longley: Mr. Pyne tells him to go on, and he goes on:

A. I should like to point out that the enclosure the Shipping Inspector of the Second District added to his letter of May 3, 1954, contains first the reference to section 99 sub-section 7c of the Shipping Decree of 1952. There it is said that the goods mentioned in that sub-section should be packed in gas-tight containers, whilst the next line of that enclosure says 'packing in [866] close-woven bags'. As a close-woven bag cannot possibly be gas-tight packing, I conclude that the Shipping Inspection themselves do not consider naphthalene as to be necessarily packed in gas-tight containers. There is a discrepancy between those two statements, which Mr. Metz was not able to clear up, but he had to admit the discrepancy.

"Q. That is your conclusion. A. That is a fact."

• • •

"Q. Coming now, Dr. Van Rossem, to your visit to the office of the Inspector General of Shipping on August 20th, I take it that that office did not deny that the letter which

has been marked Beerman Exhibit 3 for identification"—now Libelants' Exhibit 44 for identification—"was authentic. A. No, surely not.

"Q. Did you ascertain by whom the letter had been signed? A. It has a signature. Mr. Metz told me, that the signature is of no importance, for the letter must have been written by somebody else.

"Q. Someone else than the person who signed it? [867] Who is the person whose signature appears on the letter? A. I don't know him personally but it is an engineer.

"Q. An engineer in the office of the Inspector General of Shipping? A. Yes, Mr. Van Bruggen happened to be the highest in command available at the moment this letter was signed.

"Q. That is the highest in command available at the office of the Inspector General of Shipping? A. Yes."

Mr. Pyne says, "And also limited to the particular time that the letter was signed.

A. Yes, at the moment the letter was signed.

"Q. Do you know whether Mr. Metz, to whom you talked, had been second in command of the office of the Inspector General of Shipping in 1952? A. I think so. He told me that he was at the Shipping Inspection for I think four years.

"Q. But you know that only because of what he told you? A. Yes, I'm not guessing for it.

"Q. You do not know when the printer's proof which Mr. Metz showed to you had physically been printed at some printer's shop? [868] A. The only thing I know is that it must have been printed after art. 99 came into force.

"Q. Which I think you told us was January 1953. A. Yes.

"Q. Did you enquire whether that was the first proof or the second or the third or a subsequent one? A. No, I did not enquire especially.

"Q. So far as you know or have been informed, there may have been earlier printer's proofs which this proof which was shown to you has replaced? A. There may have been, but they could not produce any.

"Q. Do you have occasion to have books or briefs printed in your practice? A. Printed, if I have briefs printed? Yes, now and then.

"Q. Do you sometimes get more than one proof? A. Perhaps I do.

"Q. What do you do with the first proof when you get a revised proof? A. I keep it. I should certainly keep it when it was a regulation.

"Q. But you don't know whether the office of the Inspector General of Shipping follows the same practice. A. Of course not, I don't know. But I take it [869] for granted that it must be in a well-civilized government office, that when they are making a regulation and when they are quoting it to the outside for instance in a letter of July 30, 1954, that they will never destroy the original of such quotations. According to my opinion that is inconceivable.

"Q. But that again, Doctor, is your conclusion, based upon what you think they ought to do, is that not so? A. Yes."

* * *

Mr. Pyne: I would like to read from the deposition of Dr. A. Blussee Van Oud-Alblas:

"Q. Where do you reside?

(Mr. Smith reads the answers.)

A. At Rotterdam.

"Q. What is your occupation? A. I am what you might call a lawyer; we call it 'Advocaat'.

"Q. Are you a member of any law firm, and if so, what firm? A. I am a member of the firm of Dr. Bonjer, Dr. Blusse and Mr. Schaberg.

[870] "Q. For how many years have you been a lawyer? A. For 26 years.

"Q. Will you tell us what your education has been from a college or university standard onwards and particularly with respect to law studies? A. I was born at Dordrecht, followed there the gymnasium, studied law as Leyden University, passed my doctorate examination in 1927 which entitled me to the degree of Master of Law. Subsequently I was promoted in December 1929 to Doctor of Law on a dissertation book.

"Q. Was that degree a university degree? A. Yes, it is the university degree of Doctor of Law at Leyden.

"Q. Since 1927 when you became a Master of Law have you continually been engaged in the active practice of the law? A. I started practicing as a lawyer in March 1929 at Rotterdam. Since I had obtained my degree of Master, I had commenced my studies for this book, in order to be promoted.

"Q. At all events since 1929 and when you became a Doctor of Laws you have continually been in active legal practice? A. Yes, I did.

[871] "Q. And you, like all lawyers, are licensed to practice law before all law courts in the Netherlands? A. Yes, including the Supreme Court.

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, Maritime Law, marine insurance, and quite another area; expropriation law.

"Q. Are you a member of any legal institutions, associations or clubs or societies? A. Yes.

"Q. Will you name them? A. Naturally I am a member of the Netherlands Union of Attorneys. I am also a member of the Netherlands Association for Maritime Law, which is a branch association of the Comite Maritime Internationale.

"Q. In one of your earlier replies you have referred to some book or treatise you have written. Will you be good

enough to tell us what book that was? A. On the Hague Rules in the Brussels Convention 1924.

"Q. And you have published that book or treatise? A. I have got it with me. I will show it to you."

Mr. Pyne: He presents a book published in 1929, at Leyden, with the name of the firm of publishers, [872] and the title of the book, "De Hague Rules in de Brusselsche Conventie 1924.

(Continuing reading:)

"Q. Have you made a research or investigation of the question as to whether or not in the Netherlands there is any law, rule or regulation concerning the manner of loading, stowing or carrying crude naphthalene on vessels? A. Yes.

"Q. Was there in June/July 1952 in force in the Netherlands any such rule or regulation which specifically referred to or mentioned naphthalene? A. No.

"Q. Is there now and since June/July 1952 has there been any such law, rule or regulation specifically mentioning or referring to naphthalene? A. No.

"Q. Was there in force in June and July 1952 in the Netherlands any general laws, rules or regulations concerning loading, stowing or carrying on vessels of dangerous cargoes? A. Yes.

"Q. Will you identify the law for us. A. You are talking about June and July 1952?

"Q. That is correct. [873] A. We then had regulations regarding dangerous cargo in the so-called Schepenbesluit which I have here.

"Q. Will you identify the article in which that regulation is contained and the page of the particular book?"

Mr. Pyne: The page will be different, your Honor. We have a later edition which was identified with different paging. The part we are interested in here is identical with Libelants' Exhibit 34-A, the

translation of Article 94. If that is agreed, I won't mark this book for the time being.

Mr. Longley: That is all right; you do not need to put it in twice.

Mr. Pyne: (Continuing reading)

"Q. Coming down to the present time, is there now in force in the Netherlands any general law, rule or regulation concerning the loading, stowing and carrying on vessels of dangerous cargoes? A. Yes. The Schepenbesluit which was in force in June and July 1952 was replaced by another one which came into force in the beginning of January 1953. I'll tell you exactly, on January 26, 1953, and in this new Schepenbesluit called Schepenbesluit 1952, because the date of the decree was December 31st, 1952, you will find regulations also regarding dangerous goods in [874] Article 99."

Mr. Pyne: I will state here also, your Honor, that Article 99 as a translation has been marked Libelants' Exhibit 37-A for identification.

Mr. Zisgen: It is in evidence.

Mr. Pyne: In evidence; I am sorry.

(Continuing reading):

"Q. In your opinion as a matter of law, would or would not naphthalene come within the provisions of the decree in force in June and July 1952 concerning dangerous cargoes?"

Mr. Zisgen: We withdraw the objection.

Mr. Pyne: (Continuing reading.)

A. I can only answer this question from the legal side.

"Q. That is all you are asked to do. A. In order to come under the regulations regarding dangerous cargoes, this crude naphthalene should conform with section 4 of art. 94.

"Q. When you say that crude naphthalene should conform with that section 4 or art. 94, will you explain to us

what you mean by that? A. That it should be a solid commodity which can easily be brought to combustion or which when heated [875] up to 70° C would give combustible gases.

"Q. Are you able to state whether or not naphthalene is such a product? A. No, I am no chemist,

• • •

[877] "Q. In your opinion as a matter of law, if crude naphthalene were according to a chemist a product included in the definitions in sub-division 4 of art. 94, would it be legally permissible under Netherlands law to carry crude naphthalene otherwise than in gas-tight packings? A. Definitely not, unless there might have been given a special exemption of this rule.

"Q. Would you please explain to us from a legal [878] aspect what you mean and what law, if there is a law, you referred to when you mentioned that special exemption or dispensation? A. The rule given in art. 94 section 4 is a very clearly worded and strict one. Those commodities must be carried in gas-tight containers, so this rule being clear, it has to be followed up and anybody acting against it is acting in controversion with this rule and with the Besluit. Only art. 123 of the Besluit allows the Queen or in special circumstances the Chief Inspector of Shipping acting in name of the Queen, to give dispensation. I must remark, however, that this only regards exceptional circumstances and that even then no conflict may come about with the international treaties on this subject.

"Q. Would that section to which you have just referred permit the exemption to be a general one or would it require that it would be in each instance in a particular case? A. Certainly not a general exemption, because the wording of the article clearly mentions that it is only meant for exceptional situations.

Deposition of Dr. A. Blusse

"Q. Will you identify the portion you have [879] referred to? A. Von Rossem exhibit 1, page 169, chapter 13, art. 123."

• • •

(Marked Petitioners' Exhibit Y.)

• • •

"Q. If crude naphthalene were a product not within the definitions of art. 94, would any Government official or Government employee have authority or any legal right to make rules or regulations concerning crude naphthalene? A. No, because art. 94 opens the possibility, in section 11, of the Chief Inspector of Shipping giving supplementary regulations regarding stowage, package and carriage, but this is limited to the commodities meant in this article. Therefore he has not this authority outside the article and [880] regarding commodities not meant in this article.

"Q. Was there in June and July 1952 any Netherlands law, rule or regulation requiring products or goods referred to in art. 94 of that law to be labeled or marked in any way? A. No.

"Q. Is there now in force any Netherlands law, rule or regulation which would require products or goods referred to in any way as dangerous goods of being labeled or marked? A. Yes.

"Q. Will you point out to us and identfy that law? A. You will find this as Notice to Shipping Nr 5/1952 of November 19, 1952, in which the Inspector General orders that dangerous goods which are loaded in a Netherlands port or in a port in the Netherlands Antilles must be symbolically marked.

"Q. And what volume and page is that?

• • •

Mr. Zisgen: 37, Mr. Pyne.

Mr. Pyne: Libelants' Exhibit 37, page 478. Has that been translated into English?

[881] Mr. Longley: 37-A is the translation.

Mr. Pyne: 37-A. Has that been translated, Mr. Zisgen?

Mr. Zisgen: I don't think that that notice to shipping has been translated.

Mr. Pyne: Well, may I have the privilege, then, with respect to 37-A, your Honor, of later supplying a translation in English of that particular page?

The Court: Yes.

• • •

Mr. Zisgen: Before Mr. Pyne goes on, your Honor, I was mistaken about that "Notice to Shipping."

[882] Mr. Pyne: Beg pardon?

Mr. Zisgen: Notice to Shipping No. 5 in 1952 has now been marked as Petitioners' Exhibit U.

The Court: That is instead of Libelants' Exhibit 37-A?

Mr. Zisgen: No, your Honor. This is the one that Mr. Pyne asked me if it had been translated and I said I did not think it had been.

Mr. Longley: He said "Is that instead of 37-A?"

Mr. Zisgen: No, it is not instead of 37-A. 37-A is a translation of part of the statute.

Mr. Longley: I said "37-A"—it is wrong.

Mr. Zisgen: No, it should not be 37-A. It is U.

Mr. Pyne: We can correct that letter.

Mr. Stonebridge: Petitioners' Exhibit U is an English translation, your Honor, of Shipping Order No. 5.

The Court: Then when the statement was made before that the English translation of that shipping order No. 5 was 37-A——

Mr. Longley: That is an error.

The Court: ——that is an error?

Mr. Longley: Yes.

[883] Mr. Pyne: It should be Petitioners' Exhibit U, your Honor—that is an English translation.

The Court: All right.

Mr. Pyne: (Reading)

"Q. Is there a sub-section 13 of art. 94 of the decree in force in June and July 1952? A. Yes.

"Q. Will you advise us what the contents of that sub-section is and identify book and page? A. In Van Rossem exhibit No. 1, page 159"——

* * *

Yes, it is Libelants' Exhibit 34-A, Section 13, your Honor—and that is in the translation—the whole article including that section is in the translation in Libelants' Exhibit 34-A.

And the witness continues:

"Yes, this section was inserted in December 1939 and this book which should have been ready long ago does not exist.

"Q. Has any such book under that section ever [884] been issued or published up to the present time? A. No. You should say up to the new Schepenbesluit, which repeats more or less the same section and even under the new Schepenbesluit no such book has appeared.

"Q. Will you be good enough to identify for us the article, sub-section and page number and the exhibit which contains or refers to this new section you just mentioned? A. Beerman Exhibit No. 4"—that is now Libelants' Exhibits 37 and 37-A is the translation—"page 166, section 15, of art. 99."

And that exhibit, Section 99, including the Section 15, is in the translation, the section that the witness refers to, your Honor.

"Q. Under Netherlands law is there any required procedure which must be followed to give legality or any bind-

ing force or effect to any such book as is referred to in those sections to which you have just referred, 13 of the June and July decree and 15 of the January 1953 decree, or any part or portion of such book? A. In the first place I might point out that both sections only talk about the book, so I think the whole thing should be published, not part of it.

[885] "In the second place the sections themselves say already that the book has to be published by the minister.

"In the third place, in order to obtain binding force the appearing of this book should be brought to general notice by way of the Nederlandse Staatscourant.

"Q. You referred to sub-section 11 of art. 94 of the former decree in force in June and July 1952 and if I understood and recall correctly, you stated that the Inspector General under that article had authority to issue supplementary regulations concerning products or goods referred to in art. 94. Does the decree to which you have referred and which came into force in January 1953 have any such provision? A. Yes, certainly.

"Q. And what is the number of the section, book and page? A. It has got the same provision as section 12A of art. 99, Beerman exhibit 4"—that is Libelants' Exhibit 37 and 37-A—"page 165."

And again the entire section 99, including that sub-section, is in the translation, your Honor.

"Q. Under Netherlands law, is there any required [886] procedure which must be followed to give legality or any binding force or effect to any such regulation of the Inspector General? A. Yes. It must be brought to the general notice by way of the Nederlandse Staatscourant.

"Q. And how is that accomplished or done? A. I might refer to the Notice to Shipping I mentioned already Nr 5/1952, regarding the marking of dangerous goods, which is exactly given under art. 99, section 13, of the Schepenbesluit 1952. This shows how it is done.

"Q. In other words, you refer to that particular one as an example of that procedure that you say must be followed?"

And there, with permission, I will insert what has probably been left out of the transcript, an answer of the witness—the answer "Yes."

And Mr. Stonebridge remarked:

"The witness has been referring to a printed book."

"Q. Do any of those published or issued regulations of the Inspector General refer to naphthalene specifically or by name? A. No.

[887] "Q. As a matter of Netherlands law, rule or regulation, is the master, owner or any carrier by vessel under any duty or obligation to notify any Government official, Government employee or Government office when dangerous goods are being inspected to be or have been loaded on vessels? A. No. It is the duty of the shipper to do so. I refer to Section 12 art. 94"—Libelants' Exhibit 34-A—"page 150, which states that it is the shipper who is obliged to give timely notice to the captain and if the loading takes place in the Netherlands, to the District Head of the Shipping Inspection.

"Q. Are the Netherlands laws and royal decrees or rules or regulations of the Inspector General to which you have referred applicable to foreign flag vessels? A. You should look for this in art. 2 of the Schepenwet 1909. This exempts with so many words ships trading under foreign flag, provided however that the office of the company for which they are trading is not domiciled in the Netherlands and that it is not equipped in the Netherlands and that not half or more than half of the crew consists in Netherlands subjects.

Deposition of Dr. A. Blusse

[888] "Q. Will you identify book, page and article? A. Petitioner's Exhibit Y—"page 22, art. 2, section 1, letter f, together with section 2 I and II."

That has now been marked as Petitioners' Exhibit Y, and may I also request permission to supply an English translation of that section?

The Court: Yes.

• • •

"Q. Is there any Netherlands law which distinguishes passenger vessels from cargo vessels? A. Yes. The same law, art. 1. In the definition of passenger vessels"—Petitioners Exhibit Y—"page 18, and for the now valid form of the Schepenwet"—Libelants' Exhibit 37—"page 19."

And again, your Honor, I think that section is in the translation, but if not, may I supply it?

The Court: Yes.

• • •

[890] "Q. You agree that the maritime law of the Netherlands is based upon the same general principles as The Hague Rules? A. You should put it this way, that certain principles especially regarding stowage and care for the goods which you find in The Hague Rules you will also find in the Netherlands Commercial Code.

"Q. I think that is a better statement than mine, Doctor. And when you mentioned the Netherlands Code, you are referring to the Maritime Code which I have here in translation as Beerman exhibit 1 for identification. A. Yes, I know this book quite well.

"Q. You are familiar with that book? A. Yes.

"Q. So far as you know is it a fair and accurate translation? A. It is an accurate translation, yes. Mr. De Kock van Leeuwen, who made it was assistant secretary to the Netherlands Shipowners' Association.

Deposition of Dr. A. Blusse

"Q. Under the Netherlands Maritime Code an ocean carrier is obliged to properly and carefully [891] stow and carry the goods which she accepts for carriage, is she not? A. Those words you will not find in the Commercial Code, they are out of The Hague Rules.

"Q. Quite right. Does the essential obligation of the carrier under the Netherlands maritime law differ from the statement I have just made? A. The law says that the contract of carriage obliges the carrier to exercise due diligence for the preservation of the goods. It further states that the carrier is not allowed to stipulate that he shall not or only to a limited amount be liable for loss or damage caused by amongst others rough handling or insufficient custody of the goods.

"Q. Would you not as an attorney interpret the obligation of due diligence which you have just read us from the Code as roughly the equivalent of proper and careful stowage? A. Yes.

"Q. And you have told us that the carrier may not by contract exempt himself from that obligation, have you not? A. Yes.

"Q. That obligation extends, does it not, to [892] goods carried on deck with the shipper's permission? A. If the shipper has given the express permission of the goods to be carried on deck he has no complaint if damage is caused by the simple fact that the goods were on deck. Apart from that the carrier is under obligation for right handling and sufficient custody, which involves proper stowage.

"Q. In determining whether stowage of goods is or is not proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves, do they not? A. I think that the Netherlands law courts take into consideration everything which would be of importance in determining whether stowage is right or not.

"Q. And that would include the nature and characteristics of the goods, would it not? A. Among other things.

Deposition of Dr. A. Blusse

"Q. And it would also include what other goods were in stow on the ship, would it not? A. Yes.

"Q. And that would be true whether those other goods had been stowed at a Netherlands port or at a foreign port, would it not? [893] A. Yes.

"Q. Now, you agree, do you not, that whether a particular shipment of solid goods as distinguished from liquids comes within the definition in art. 94 is a matter of fact? A. I think this question has to be judged on the basis of the terms of art. 94.

"Q. Precisely. And art. 94 section 4 has two descriptions, does it not? In the first part, the first description is contained in the words 'easily inflammable', is it not? A. Yes.

"Q. And you agree, do you not, that whether or not particular goods are easily inflammable is a question of fact? A. Yes.

"Q. Do you not also agree that the question of whether particular goods will evolve combustible gases when heated to 70°C is a matter of fact? A. Yes.

"Q. And that fact will not be changed by the actual practice of people handling the goods, will it? A. The facts may not be changed, but it is the question whether all goods which might comply with [894] those facts would really be considered as coming under this section of art. 94. I pointed out already that to my opinion naphthalene, if it would be liable to combustion or even if it would develop combustible gases when heated up to 70°C should be considered as coming under this article. The practice I know and the practice which is common knowledge regarding those goods is that they are not considered to fall under this article.

"Q. Then what you are telling us is that the meaning of these words in section 4 art. 94 is to be determined not by the courts but by the practice of persons handling the goods, are you not? A. I think that when the court has to judge this question it will take all things into account

and it might certainly attribute value to the way in which this commodity as a matter of fact has been handled generally and for a very long time.

"I want to point out in this respect as regards the transport of this commodity by Netherlands vessels, I am not talking now about foreign vessels, those ships are under the constant control of the Shipping Inspection, subsequent to art. 10 Schepenwet the regulation of the Schepenbesluit. [895] "For many years already Netherlands ships are carrying naphthalene and crude naphthalene not in gas-tight containers. This must be perfectly well known to the Shipping Inspection and if this would be in direct violation with a strict article like art. 94 section 4, the Shipping Inspection should have jumped in immediately years ago already.

"Q. That is the basis upon which you reach the conclusion that naphthalene is not within the purview of subsection 4 of art. 94? A. Yes. It makes it highly questionable to me at least.

"Q. But it is a matter of your opinion. A. Naturally.

"Q. You agree, do you not, that sub-section 4 of art. 94 contains no such exemption in its own terms? A. No.

"Q. It does not? A. No, it gives very strict rules to be observed.

• • •

"Q. Are you not in effect telling us that [896] shippers and carriers may merely by a continued practice of their own amend or repeal a law or a statute? A. No, I am not. I am only telling you that the functionaries who have been charged to look after continuously that the statute is being strictly observed, evidently very well knowing this practice do not see anything in it, which is against the statute.

"Q. That again is an assumption, is it not? A. There is the simple fact that for years and years and I might say after the other war naphthalene has always been carried in bags right under the eyes of the Shipping Inspection which

it might be taken gives full attention to the question of stowage or wrong stowage."

[897] "Q. By the other war do you mean World War I? A. Yes.

"Q. How old were you at the end of World War I? A. Fourteen years.

"Q. And where were you? A. In Dordrecht, 20 km from here.

"Q. And were you in the naphthalene business? A. I certainly was not at that time.

"Q. Were you in the shipping business? A. No.

"Q. And you were not practicing maritime law, were you? A. Not then.

"Q. You are assuming that the officials charged with supervision of stowage of vessels first had full knowledge of what you say has been the practice, and second have reached a definite determination that that practice does not violate art. 94, is not that so? A. I can only repeat that this practice must be known to them for many years, that they have allowed it through all those years and that at least since 1932 they have the Schepenbesluit which was still valid in June and July 1952.

• • •

[898] "Q. You base your opinion that naphthalene is not within the purview of subsection 4 of art. 94 partly on the fact that it has not been carried in gas-tight containers, is not that so? A. Only partly. As I explained to you I base it on the one side on the common practice as to carriage of this commodity and on the other side on the attitude taken by the Shipping Inspection towards this practice.

"Q. And that attitude you ascertain merely by observing that the Shipping Inspectorate fails to interfere with the practice? A. No, not only that, I won't say it fails to interfere because then you assume that it should interfere.

"Q. Because it does not interfere? A. It does not interfere and has not issued any particular supplementary regulation regarding the carriage of this stuff.

"Q. And when you say 'has not issued,' you mean [899] there has not been published in the Staatscourant, do you not? A. There is no regulation on this subject.

"Q. Let's not get ahead of ourselves. A. Not only that, but no regulation has been brought to common notice in any other way.

"Q. What other ways might there be? A. It could have happened—I won't say it is right—by circular letter. I know when there was the question of the transport of mud coal the Shipping Inspector gave out a Notice to Shipping in the ordinary way in the Staatscourant. But he also wrote and sent a special letter to one of the companies he knew was transporting this commodity, warning them. I know one thing, and I checked this at the Association of Netherlands Shipowners, that there is not any intimation from the side of the Inspector General of Shipping as regards carriage of naphthalene.

"Q. You have found it so in your experience? A. Certainly.

"Q. But you would not classify it as an official source of information, would you? A. I think that information of this kind would have a very decisive value before a Dutch court, that [900] is all I can say.

"Q. That is not an answer to my question. A. If you mean by 'official' a public body, I say you are right.

"Q. You told us that the rule given in sub-section 4 of art. 94 is strict and clear, and that contains no exceptions, does it? A. No. I might amplify by saying that it is written in the imperative form.

"Q. Dealing with the situation envisaged in art. 123 permitting exemptions under certain circumstances, there is no limit in the article itself to the number of occasions on which an exemption can be granted, is there? A. The article talks

of 'buzondere omstandigheden', which clearly shows that it is not meant for ordinary or regular events, only for signal events.

"Q. What I say, Doctor, is that the article does not put a specific numerical limit on the number of exemptions, does it? A. No.

"Q. In theory, if particular special circumstances continued for a long time, a very large number of exemptions could be granted under that article, could they not? A. No, I do not think that is in the meaning of [901] this article. The wording of this article clearly shows it is only meant for very special signal events and not for something which is happening as a matter of fact regularly and is therefore ordinary. I want to point out to you in this respect that this dispensation can only be given either by the Queen, which in itself already shows how rare it is, or by the Chief Inspector of Shipping, acting in her name. If, therefore, such disposition would exist, it certainly should be found in writing.

"Q. And when you say Chief Inspector of Shipping will you give me his Dutch title, please? A. Inspecteur-Generaal voor de Scheepvaart."——

Mr. Longley: Which, translated here meant Inspector General of Shipping.

"Q. You told us that if naphthalene were not within the purview of sub-section 4 of art. 94, no Government official could issue any regulations concerning it, is that correct? A. Not the supplementary regulations mentioned in art. 94.

"Q. What other regulations might be issued and by whom? A. No other.

• • •

[902] "Q. Sub-section 13 of art. 94 and its successor sub-section 15 of art. 99 together have been in existence since 1939? A. Yes.

"Q. And in the 16 years since sub-section 13 of art. 94 first came into force this book 'Dangerous Car- [903] goes has been in process of preparation, is that correct? A. They told me.

"Q. In any event, although authorized by Section 13, so far as you know, no such book has yet been published? A. I should not put it this way. The minister has not been authorized to publish this book, he has been ordered to do so, and he has not yet done it.

"Q. And then in that whole period of sixteen years there have been in your view no regulations in effect concerning the transportation of dangerous cargoes? A. Yes, there has been one. I mentioned this already to you. It is the 1952 regulation regarding the marking of dangerous cargo. But you should keep well apart the supplementary regulations which can only be given by the Inspector General of Shipping, and this book which the minister has to issue and as a matter of fact the 1952 Notice to Shipping regarding dangerous cargo is from the Inspector General of Shipping.

"Q. Well, then, despite the fact that the book which the minister has been ordered to publish has not yet been published, am I correct that since 1939 at least there has been in the Inspector General of Shipping the [904] power to issue so called supplementary regulations governing the transportation of dangerous goods? A. Certainly, you will find it in section 11A, Art. 94 of the old Schepenbesluit.

"Q. The one in effect in July 1952? A. Yes.

"Q. And provided that the Inspector General proceeds in accordance with the law, he could have at any time within that period since 1939 made valid binding regulations for the transportation of naphthalene? A. If this would be dangerous cargo in accordance with art. 94 subsection 4.

"Q. Then we come down to this, don't we, Doctor, that the basis for your opinion that in July 1952 there was no regulation in effect governing the stowage and transportation of naphthalene is simply that you have not found any

published in the Staatscourant or in a Notice to Shipping, or in a circular letter? A. Or in whatever other way.

"Q. What do you mean by 'whatever other way'? A. I told you already it might have been by circular letter, however that would not have been how it should have been, because in accordance with the decree of December 18, 1813 number 6 there was instituted the Nederlandse [905] Staatscourant especially to publish all decrees, nominations and information by the ministers and by all national boards and functionaries, civil or judicial, which they will bring to public notice.

"Q. You mentioned circular letters. A. Yes, because I discovered in this one case that the Inspector General not only published in the ordinary way in the Nederlandshe Staatscourant but also wrote separate letters.

"Q. What effect do you attribute to the separate letter? A. I don't think that in itself would be sufficient to give a regulation binding force. It is only meant in my opinion to specially draw the interest of the parties interested to the fact that such regulations have been published.

"Q. Suppose, Doctor, that there were only one subject of the Kingdom of the Netherlands interested in a particular subject. Would you not say that that one subject who received a letter such as you have mentioned, was properly put on notice? A. No. I still in this very hypothetical case would persist in publication in the Staatscourant.

[906] "Q. But you would not hold that to be a circular letter within your definition. The letter has to go to more than one party if only one party were interested, would it not? A. A circular letter is always meant for more than one man. But I explained already to you that such a letter would never bring about binding force to a regulation.

"Q. To go at it another way, still using the same hypothesis that only one Dutch national has any interest in the particular subject, would you feel that that Dutch national who received a letter from the Inspector General of Ship-

ping was justified in ignoring it, because he could not find that it had been published in the Staatscourant? A. This letter would oblige him probably to look for this publication. It all depends on the contents of the letter. I don't know how far you will go. It might have been that the Inspector General of Shipping simply writes 'Dear Sir, I want to draw your attention to such and such a publication which you can find in the Staatscourant No. So and so.'

"Q. Suppose, Doctor, instead of that and on the same hypothesis, the letter said 'I want to draw to your [907] attention that it is prohibited to do such and such.' A. No. I would not take this. Certainly not.

"Q. And by 'I would not take this,' you mean the recipient of the letter might ignore it with impunity? A. I would simply answer that I had nothing to do with such information.

"Q. Now the Staatscourant I take it is a legal newspaper? A. Yes, in a way, yes.

"Q. By that I mean it is not such a newspaper as one buys on the newstand on the way home after work for ordinary reading matter. A. No, not quite.

"Q. Is its circulation, if you know, restricted largely to lawyers? A. I should not say largely to lawyers, certainly not. There are all kinds of bodies, boards and organizations which are subscribing to it.

"Q. And what sort of bodies are they? A. It differs. It can be as regards building, an organization of builders of houses who must know every rule and regulation which is published and affects its members, and in the same way an association of underwriters can be subscribing to it, shipbuilders, anybody who wants [908] to know exactly what is going on and how to protect the interests of their members surely will subscribe to the Staatscourant, in order to know which regulations appear.

"Q. You mean then that in addition to lawyers, trade and professional organizations also subscribe to the paper. The general public does not, does it? A. No.

"Q. And yet you told us that that was the means adopted in the Netherlands to give general notice of the existence of a regulation. A. Yes.

"Q. And that, I take it, in your opinion is the only lawful way in which to give general notice of a regulation. A. Yes. I mean this, a regulation which should be published in the Staatscourant, because you know apart from this there is also the Staatsblad.

"Q. Yes. I should have said, Doctor, that in your opinion publication in either the Staatsblad or the Staatscourant is in your opinion required to give validity to a regulation? A. Yes.

* * *

[915] * * *: This is Captain C. A. W. Bos, and * * *

"Q. Captain Bos, will you tell us where your residence is? A. In Rotterdam.

"Q. And you are a Dutch citizen? A. Yes, sir.

"Q. By whom are you now employed? A. By Holland-America Lines.

"Q. For how many years have you been employed by Holland-America Line? A. For 28 years.

"Q. And during that period of 28 years will you tell us in what capacity or capacities you have been employed? A. First as an apprentice officer, then fourth, third, second and chief officer, and after that inspector of the Nautical Department and now I am chief of the Nautical Department.

"Q. How many years did you serve on vessels of the Holland-America Line? A. Twelve or thirteen years.

"Q. And then after that your position was changed [916] to inspector? A. Inspector of the Nautical Department.

"Q. How many years were you inspector in the Nautical Department? A. Twelve years, from 1940 to 1951.

Deposition of Captain C. A. W. Bos

"Q. Will you tell us in a general way what the duties of an inspector of the Nautical Department were? A. In the first place to take care that the ships are seaworthy when they sail from the home ports and the other ports. You take care of the crews, of the ships, a. s. o."

Mr. Pyne: That means "and so forth." It is their abbreviation for "etc.", a. s. o.

"Q. Does the inspection as far as seaworthiness is concerned, include the stowage of cargoes? A. Yes.

"Q. And in your present capacity of chief of the Nautical Department, what are your duties? A. I don't do that myself, but it belongs to my department. Loading and discharging of ships. General supervision is my competence.

"Q. As to your sea service, on what type of vessels did you serve and in what capacities? A. All ships were above the 6,000 tons, seagoing [917] vessels.

"Q. Were you an ordinary sailor? A. I served only as an officer.

"Q. Do you hold any license, and if so what license? A. As chief officer, but there is not a master ticket in Holland.

"Q. How long have you had the master license? A. Since 1944, eleven years."

Mr. Pyne: Where he says "there is not a master ticket in Holland," that is another stenographic error. It should read "There is now a master ticket in Holland."

"Q. How long have you had the master license? A. Since 1944, eleven years.

"Q. Has all of your sea service been on Holland-America Line vessels? A. About half a year on the Emzeteo Line, the company from Holland to the Mediterranean, in 1931.

[918] "Q. Did the vessels on which you served at sea carry naphthalene? A. The H. A. L. vessels carry naphthalene."

Mr. Pyne: Again the stenographer is abbreviating. The witness said Holland America Line—the Holland America Line vessels carried naphthalene.

"Q. And did the vessels with which you were connected in your capacity as inspector for the Holland America Line carry naphthalene? A. Yes.

"Q. And are they still carrying naphthalene? A. Yes.

"Q. While you were at sea and on the vessels on which you served, can you tell us how and where the naphthalene was stowed or carried, and I am speaking of crude naphthalene in bags particularly. A. It was always stowed on deck on the foreship and the aftership, never under deck.

"Q. With respect to whether or not it had any cover, what was the situation? A. When I served on the ships it was never covered.

"Q. What was the situation in that respect with the manner and place of stowage during your period of service as an inspector? [919] A. About six years ago, it may be five or seven years, some of the shippers asked to cover it up against rain or sea water, so after that time they covered it up, they don't wrap it all up.

"Q. Will you explain a little more fully and precisely what you mean by that? A. It is not all covered, only on the top side for rain water. When you wrap it up it is all underneath.

"Q. And that was done in such instances as when the shipper requested it? A. Yes.

"Q. In the absence of such request of the shipper, what is and was the situation? A. Well, it was that we did not cover it up when the shipper did not ask for it, but the last one or two years we mostly cover it up.

Deposition of Captain C. A. W. Bos

"Q. Was there any other reason beside or in addition to the shipper's request which caused you in the Holland America Line to cover in the manner you stated? A. No, sir.

"Q. Was the safety of the ship and the cargo a factor which caused you to change the method of [920] stowage so as to cover it? A. No, sir.

"Q. Do you know or have you ever heard of any rule or regulation, royal decree, act or other law in the Netherlands which specifically refers by name to the loading or stowage of naphthalene?"

(• • • objection argued and overruled • • •)

[922] A. I never heard about it.

"Q. To your knowledge or to the best of your information was there in June or July 1952 any rule, regulation, royal decree, act or other law in force and effect in the Netherlands which specifically referred to or mentioned naphthalene by name?"

(• • • objection argued and overruled • • •)

[923a] A. No, sir.

• • •

[924] "Q. Can you give us any rough general idea of how often during firstly your sea-service, whether it was often or rarely, whether there were a large number of voyages in which naphthalene was carried on the vessels on which you served? A. Before the war nearly on every trip we had naphthalene on deck.

"Q. And approximately either by month, year or any way you can give it, can you tell us how many trips you did make? A. I think half of the trips. I made about 20/30 trips to ports on the East Coast of the U. S.

Deposition of Captain C. A. W. Bos

"Q. In the same way can you roughly give us an idea or estimate of how many vessels carried naphthalene during the period of your service as inspector for the H. A. L.?" (Holland America Line)? A. No, I can't answer that. Quite a lot.

"Q. And of the quite a lot, is there any way of estimating approximately how many of them would carry naphthalene stowed as you mentioned on deck? A. More than half.

"Q. Are you familiar or were you familiar with, did you ever see the motor vessel Black Gull? [925] A. No, I don't know I have ever seen it.

"Q. Did you ever hear of a fire which occurred on the Black Gull at sea in the month of July 1952? A. I read it in the newspapers.

• • •

"Q. Will you tell us whether or not in your experience the carriage of crude naphthalene in bags piled on deck of a vessel with dunnage eratings placed only along the bulwarks, which keeps the freeing [926] ports open and with the bags held in place by rope nets, but not otherwise covered, such a stowage and method of transportation is a usual customary one."

(• • • objection made and withdrawn • • •)

"Q. Is such a method of stowage and carriage a usual and customary one? A. Yes.

"Q. Is such a method of stowage and carriage of naphthalene in your opinion a good and proper method? A. A proper method."

• • •

Fritjov Andersen—For Petitioner—Direct

[927] FRITJOV ANDERSEN, previously sworn, called on behalf of the Petitioner, testified [928] through the interpreter as follows:

Direct examination by Mr. Pyne:

Q. Captain Andersen, I believe you told us that you are now the master of the motor tanker Tank Princess. A. (In English) Yes, sir.

Q. You have been temporarily relieved of command to come here to testify? A. Yes.

Q. And where did you leave the motor tanker Tank Princess to come here? A. At Singapore January 28th.

Q. What in total number of years has been your sea service, both as a sailor or an officer? A. I commenced to sail in 1922 and became port officer in 1927, and sailed as third, second and chief officer until 1948, with the exception of during the war and the time that I attended maritime school and vacations.

Q. How long have you had or when did you first get a mate's license? A. 1927.

Q. And you presently have a master's license? A. Yes.

Q. When did you first get your master's license? [929] A. 1946.

Q. And all those licenses have been Norwegian licenses? A. Yes.

Q. And on what type of vessels have you served as an officer, whether mate or master? A. Always on general cargo ships except during the last two years when I have been master of a tanker.

Q. And that is the tanker called the Tank Princess? A. Yes.

Q. Is she a vessel managed by Sigurd Herlofsen Company of Oslo? A. Yes.

Q. Now, during you service as mate or master, how long have you been in total number of years on vessels in Black Diamond Corporation trade? A. I have been master in ships sailing for the Black Diamond since 1949.

Q. Will you name the ships on which you served in the Black Diamond trade? A. Black Condor, Black Gull, Black Heron.

Q. Three of them? A. Yes.

Q. Can you tell us approximately or accurately, whichever you can, how many trips between European ports and the United States you made on those three Black Diamond vessels? [930] A. I think it should be about 24.

Q. And on those trips, on how many of them was naphthalene carried on deck? A. Between 15 and 20.

Q. I believe you have told us previously, but I am not sure, when you joined the Black Gull. A. I went on board the Black Gull May 22, 1952.

Q. Had you previously, before that, served on the Black Gull? A. No.

Q. When you boarded the Black Gull did you make any inspection of the vessel, and, if so, what? A. Yes.

Q. Now, what did you do? A. I went through the cabins, the hull, midshiphouse, and later when the ship was ready for sea—I went through all the rooms in the midshiphouse, the poop, then later when the ship was ready for sea I examined the ship further.

Q. When you say you later "examined the ship further," when was that and what did you do? A. After the ship was discharged in the U. S. A.—in the United States.

Q. When you first joined the Black Gull, where was she? [931] A. She was lying in Rotterdam.

Q. Was she loaded or light? A. She was loaded.

Q. Did that have anything to do with the inspection you made when you first joined her? A. Yes, because I examined the ship later in the holds, when she was empty.

Q. On those inspections and examinations did they, taken together, cover the entire vessel? A. Yes.

Q. And what condition did you find the vessel in as to hull and equipment? A. I found the ship in good order.

Q. Did that cover both hull and equipment and all parts of it?

The Interpreter: Yes, he said that before.

Q. The log books of the Black Gull have already been put in evidence, and I believe that you identified them. A. Yes.

Q. That is, the deck log books. A. Yes.

Q. At the time of the fire on the Black Gull, what other ship's papers were on board the vessel? [932] A. All the certificates belonging to the ship.

Q. Will you name what they were, as best you can recall them? A. International Loadline Certificate, Trade certificate, certificate of nationality, radio safety certificate, medicine certificate, rat certificate.

Q. Would a rat certificate be something like a health certificate?

The Interpreter: No, no——

Mr. Pyne: Let the witness testify.

A. In one way—fumigation certificate.

Q. Are these certificates and papers that you have already mentioned issued by the Norwegian Ship Control, a Government agency? A. Yes, but we also had the Panama and Suez Canal certificates.

Mr. Pyne: I did not get that.

(Record read.)

Q. Did she have a classification certificate on board? A. Yes.

Q. From what society and in what class? A. The Norwegian Veritas Class 1, A-1.

Q. Did she have a government issue specification issued for the crew? [933] A. Yes.

Q. Were there, when you left the vessel at the time of the fire, any passengers' tickets on board? A. Yes.

Q. Now, what became of all these ship's papers that you have mentioned and the passengers' tickets? A. They remained on board.

Q. I will show you what has already been marked as Petitioners' Exhibit J and ask you if that is a correct and true copy of the crew specifications which were on board the vessel (handing to witness). A. That is a copy of same.

Q. How many total number, including yourself, were on board the Black Gull on the voyage from Rotterdam, leaving Rotterdam July 10, 1952—crew only I am asking you now. A. Forty.

Q. And how many passengers were there? A. Nine.

Q. And what were the total passenger accommodations? A. Ten.

Q. Except for the 40 members of the crew and the 9 passengers, was there anybody else on board the Black Gull on that voyage? [934] A. We were 49 all together.

Q. Will you tell us whether or not the Black Gull had any fire-fighting equipment, and, if so, what equipment? A. We had fire hoses and foam fire extinguishers, and CO_2 gas for the cargo holds.

Q. That is carbon dioxide gas? A. Yes.

Q. Did she have any fire-detecting or smoke-detecting equipment? A. We had a smoke detector.

Q. Will you tell us what that is, what type it was, where it was and how it worked? A. The apparatus was placed in the wheelhouse with tubes into every cargo hold.

Q. How about the 'tween-decks? A. Also for the shelter deck.

Q. Will you explain how that apparatus worked, what it did? A. There was a fan sucking the air from the various cargo holds, and if there was any smoke, that would show in the tubes in the wheelhouse.

Q. Was that apparatus in good working order and condition? [935] A. Yes.

Q. Now, you mentioned fire hoses. Were there any hydrants or hose connections on the deck or decks of the Black Gull, and, if so, where were they? A. There was a fire line on the starboard side on the foredeck, there was one connection on the forecastle head, and three on the foredeck; on the after deck the fire line was also running along the starboard side with three couplings on the deck and one on the poop; furthermore there were two couplings on the boat deck and two on the lower bridge.

Q. Have you completed them all now? A. Yes.

Q. Did you tell us on how many voyages you made in Black Gull's services, how many of the voyages between Europe and the United States that naphthalene in bags was carried? A. That was the second voyage that I was on board the Black Gull that we carried naphthalene.

Q. But you have served on other vessels in Black Diamond service? A. I made two voyages with the Black Gull and we had naphthalene on both voyages.

Q. But did you make voyages on any other vessels [936] than the Black Gull when naphthalene was carried? A. I was on board the Black Condor since 1949, and except for four months when I was home on vacation—that is, until I went on board the Black Gull.

Q. Well, all told on any and all Black Diamond vessels, what I want to know is the total number, approximately or accurately, if you know it, of voyages on which naphthalene was carried in Black Diamond service on any vessel. A. As I said earlier, it will be between 15 and 20.

Q. Now, you have already, when you were called here before in the case for the cargo claimants, testified to the manner in which the Black Gull naphthalene cargo was stowed, have you not? A. Yes.

Q. How did the stowage on these other 15 to 20 voyages of Black Diamond vessels of the naphthalene compare with the stowage of the naphthalene on the Black Gull? A. It was stowed exactly the same way.

Fritjov Andersen—For Petitioner—Direct

Q. There has been some discussion here, and I think it was in your testimony, as to the cargo that was in the No. 4 'tween-decks. Will you look at this stowage plan (handing to witness)

[937] (Witness examines)

Q. Was there any cargo in No. 4 'tween-decks? A. Yes.

Q. What was it? A. There were 100 casks of some kind of brandy.

Q. That brandy was then in casks? A. Yes.

Q. When you previously were asked the question, through inadvertent risreading of the stowage plan, it was referred to as "cases." What is correct? A. I don't believe that I said "cases" but "casks" are right.

Q. You did not say "cases," but the question as put to you included the word "casks" and your answer, in your answer you did not pick up the difference. I just wanted to straighten that out.

Now, during the voyage after Rotterdam to the United States, was any inspection of any kind made of the cargo on the stowage? A. We saw all the cargo on the deck all the time, and rounds were made on the deck all the time—that is every day.

Q. Who made the inspections? A. The chief officer, and I was also around.

[938] Q. And what was done on those inspections, how were they inspected? A. We saw that the cargo was good and that the lashings were in good order.

Q. I believe you have already testified, in fact I know you have, to the temperatures recorded in the log book and taken in the shade outside the pilothouse; is that correct? A. Yes, the temperatures were taken in the shade outside of the wheelhouse.

Q. Approximately how would those temperatures compare in your experience with the temperatures on the decks, and particularly on the deck where the cargo was stowed?

A. I never took any temperatures down on the deck, but I should think that in the sun it would be a little warmer.

Q. When you say "a little," have you any experience that would guide you on that, and how much do you mean by "a little"? A. I never have taken anything and compared it.

Q. Coming back to the night of July 18, 1952, that was the night of the captain's dinner, was it not? A. Yes.

[939] Q. And did you leave the captain's dinner for any purpose and return? A. I was informed that we were going to pass Nantucket Lightship, and then I went up on the bridge.

Q. Is it a usual routine matter for you to go to the bridge in passing any lighthouse or mark of that kind? A. Yes, I made it as a rule always to be present when we passed certain points.

Q. Coming to the night of the fire, when did you first hear of any fire, and where were you? A. A little while after 11 o'clock at night.

Q. And where were you when you learned of it? A. I was on the way out from my room, my cabin.

Q. Will you explain where your room was with respect to the navigation bridge or wheelhouse? A. My cabin was on the lower bridge underneath the navigating bridge.

Q. I believe that is shown, is it not, Captain, on the ship's plan? Do you want to look at the plan? A. Yes, it is shown on the plan of the ship.

Q. How did you learn of the fire? A. I was advised by the third officer.

Q. And what did you do? [940] A. I ran, together with the third officer, out on the sun deck. I ran out on the lower bridge and from there onto the sun deck, and had a quick look as to where the fire was, and from there I ran up on the bridge, and ordered the man at the helm, at the wheel, to put the helm hard aport.

Q. Captain, you said you went out on the lower bridge. On what level with respect to the deck of your cabin or

your quarters is the deck of the lower bridge? A. It was on the same level.

Q. And this sun deck that you ran out on, where is that, the level of that deck, with respect to the level of the lower bridge? A. The sun deck is a continuation of the lower bridge further aft.

Q. Now, you say you took a look from the sun deck at the fire. Tell us what you then saw. A. I saw a small flame and some dark smoke.

Q. Did you see and could you tell where that smoke and flame were, or were coming from? A. I didn't localize it. I just looked down and ran up on the bridge.

Q. How was the engine telegraph when you got to the [941] bridge? A. Full speed ahead.

Q. And do you know, or can you tell us, what wind there was, if any, and from what direction with respect to the Black Gull did it come? A. It was a light wind in on the port bow, about a couple of points.

Q. You say that you ordered hard aport on the helm. A. Yes.

Q. Were any other orders given at that time by you or by anybody else, and what were they? A. I did about three things at once: Stand by with the engine, the pipe signal with the whistle, put the engines at slow speed on the telegraph.

Q. Before that hard port order, do you know what the vessel's course was? A. It was straight west.

Q. What change of course was made under the hard aport order? A. I changed course about 90 degrees.

Q. What was the purpose or reason for that change of course? A. With the ship's course to begin with the smoke from the fire went directly aft; with the change [942] in the ship's course the smoke went over to port.

Q. It brought the wind on the starboard side of the vessel; is that it? A. Yes, brought the wind in abreast of the starboard side.

Q. And that tended to carry the smoke away from the vessel, off to portside; is that it? A. Yes.

• • •

[943] Q. Captain Andersen, on board the Black Gull on this voyage did you have a copy of the vessel's charter? A. Yes.

Q. You were telling us yesterday about the stowage of the naphthalene and you testified that the stowage was examined during the voyage, and you also said that you yourself and the chief officer attended those examinations. I will ask you if you will tell us with respect to those bags of naphthalene as they were stowed what their appearance was, that is, whether they were a solid stow and what they looked like? A. The bags looked as always with naphthalene cargoes as if they had been used before.

Q. That is, speaking of the condition of the bags themselves that you are answering? A. Yes.

Q. Will you describe the appearance of the bags [944] themselves? A. The bags looked as they had looked before, and they appeared to have been exposed to rain and sun, and they were also stained.

Q. Can you tell us whether they were new or old or used bags, or secondhand? A. They looked as if they had been used before.

Q. I asked you, Captain, about the appearance of the bags in the stow as they lay on deck, and whether or not they appeared to be a solid stow. A. It was a tight stowage, compact stowage.

Q. Were there any openings between the bags on the top and the sides? A. No, the bags were stowed tightly together.

Q. Will you tell us, Captain, the location, and if you can by number, of the cabins, of the passengers' cabins, what deck or decks, or bridge, or what part of the vessel each cabin is on, and if you can tell us by number, tell us.

Let me put it this way: can you on Libelants' Exhibit 19 (indicating), point out the location of the passenger cabins, and if so, point them out by number. Maybe you could do that in a different colored pencil and it would be easier. A. On the lower bridge there were two passenger [945] accommodations, Nos. 1 and 2, and in the fore part of the boat deck there were three passenger cabins, one at the corner there just outside the smoking room, and further aft in the alleyway there were two others. These numbers correspond with the numbers on the rooms.

Q. That is, the numbers that you have written in in red pencil? A. Yes.

Q. They correspond with the numbers on the cabin doors of the rooms? A. That is right.

Q. Can you recall where the particular passengers were, which passenger occupied which cabin? A. No, but the ladies were always placed in the cabins which were nearest to the dining room.

Q. By number, as you have put them on, will you tell us the numbers of those cabins? A. Numbers 3, 4 and 5.

Q. Did you ever yourself go into those cabins? A. Yes.

[946] Q. When did you last go into them? A. In Europe.

Q. Well, when- I asked when—the time. A. Before the passengers came on board.

Q. Are you meaning before they came on board for this voyage leaving July 10, 1952? A. Yes, sometime before that.

Q. How long before is what I mean. A. It may have been in Antwerp or Rotterdam.

Q. But before this voyage, this sailing? A. Yes.

Q. Now, at that time would you tell us whether or not there were any signs in those cabins? A. Yes, there were two signs.

Q. Were there two signs in all the cabins or only some of them? A. Yes.

Q. There were two in all cabins? A. Yes.

Q. Where in the cabins were those signs located? A. They were placed above the table and over the entrance door—at the side of the entrance door.

Q. What was the substance or content of those signs? A. One of the signs stated the boat to which the passenger belonged and where the lifebelts were [947] placed, and when the meals were in the dining room, and at the same time stated that the ship was not a passenger ship, there would be limited service but that the steward would serve them up til 10 o'clock. At the same time the passengers were asked not to smoke in the dining room.

Q. Have you told us the content of both of those signs now? A. That is only one of them.

(In English) "Do not throw away any burning matches, cigarettes, cigar butts, out of the porthole or over the side."

Q. Have you now completed the substance or content of these signs?

Mr. Pyne: Mr. Rein has just told me that the first part of the first answer given in Norwegian had not been translated.

May I ask that the question and answer be read? I do not know what part was omitted. I know there was one part I was going to ask about anyhow.

(Record read)

Mr. Pyne: Mr. Rein says the witness answered the first part in Norwegian and then the witness started and gave the latter part in English, and the [948] Norwegian was not translated.

The Court: He asked the interpreter—it sounded like "Shall I give it in English?" and the interpreter said "Yes, give it in English."

Isn't that true?

The Interpreter: Yes. He asked me if he could give it in English and I said "Yes."

Mr. Pyne: I see.

(The witness speaks to the interpreter.)

The Interpreter: The Captain asked if the first sign was translated into English and I said "Yes."

Q. I did not get or hear what it was in connection with that first sign that you said about lifebelts. Would you please repeat what was on this sign concerning——

The Interpreter: They were told——

Mr. Pyne: Let the witness answer.

(The interpreter speaks with the witness.)

Mr. Pyne: Captain Lynner, will you let me ask the question, please, and then put it to him?

The Interpreter: Yes.

Q. With respect to the first sign you mentioned, you said something about lifebelts. What was on that sign concerning lifebelts? A. I said to the first question that the lifebelts [949] were placed in chests on the boat deck. The first time I said only where the lifebelts were placed.

The Interpreter: On the second answer he says where the lifebelts were placed, in the lifebelt chest on the boat deck.

Q. Now, is there any Norwegian rule or regulation with respect to where lifebelts should be kept? A. Yes, the lifebelts have to be placed in chests at the boats.

Q. What type of lifebelts were those on the Black Gull? A. Cargo lifebelts.

Q. Had they been inspected and passed by the Norwegian Ship Control? A. Yes.

Q. Did you take part or have anything to do with preparing manifests of the cargo? A. No.

Q. Did you have anything to do with bills of lading? A. No.

Q. Except for approving a proposed stowage plan that was shown you did you have anything further to do with stowage plans? A. All the time during the loading of the

ship I conferred with Captain Hollaar and at such times the stowage plan was always there.

[950] Q. But you did not prepare it. A. No.

Q. About how long after the fire started was the starboard lifeboat launched? A. About half an hour.

Q. Now, why had you not ordered the port lifeboat launched? A. Because I had taken the wind on the starboard side and the smoke passed over on the port side.

Q. Well, what did the smoke on the port side have to do with launching or using the port lifeboat? A. If I put the port lifeboat into the water they would have gotten into the smoke right away.

Q. Now, the crew fought the fire first from the after deck, is that so? A. Yes.

Q. And at some time they were forced to go to the boat deck to fight it? A. Yes.

Q. Can you estimate about how long after the fire started that the crew went to the boat deck to fight it? A. About an hour and a half.

Q. And then later they were forced to the forward deck? A. Yes.

[950a] The Court: By the after deck, where they started, did you mean the deck on the poop or was it on the shelter deck?

The Witness: I mean where the deck was placed and that has been previously stated here to be the weather deck.

The Court: Where the deck was placed?

The Witness: Where the cargo was placed.

[951] The Court: I still have not got the decks straight. Is the weather deck and the shelter deck the same?

• • •

The Court: That is the weatherdeck but not the shelterdeck?

The Witness: Yes, it is both the shelterdeck and the weatherdeck.

The Court: That is what I understood.

Mr. Longley: If your Honor please, these navigational terms sort of get mixed up. I don't think that this ship had any shelterdeck.

Mr. Pyne: I think that is right.

Mr. Longley: And Mr. Pyne agrees with me. A shelterdeck is an enclosed opening, except there are openings at the end. This ship did not have any shelter deck, she had a hold, 'tweendeck, and above the 'tweendeck [952] was the maindeck which has been called here the weather deck, and the cargo was on the weatherdeck.

• • •

The Court: I think there is confusion of terms between counsel and the witness. Certainly the witness told us yesterday that the maindeck was not the same as the weatherdeck.

Mr. Pyne: I understand from Captain Lynner also as a matter of technical shipbuilding that may be correct. The open type deck where the cargo is is not technically the main deck, but the deck below that, the enclosed, is technically the main deck. So there has, as your Honor says, been confusion there.

The Court: Does everybody now agree that the [953] naphthalene was stowed on the weather deck?

Mr. Pyne: Yes, your Honor.

Mr. Longley: Yes.

Mr. Abberley: Yes.

The Court: And the crew started to fight the fire from the weather deck, is that correct? Will you ask the witness that.

The Witness (through interpreter): Yes.

By Mr. Pyne:

Q. And it was from that after weather deck that the crew at the time you stated, I think you said about and hour and a half, were driven to the boat deck? A. Yes.

The Interpreter: Mr. Pyne, the master asks if he can explain the decks.

Mr. Pyne: If his Honor wants it, it is all right with me for him to explain anything. But I think we have it straightened out for our record.

The Court: It is his language we are dealing with, and I think he ought to do it.

Mr. Pyne: By all means.

The Interpreter: The master says he will from now on call the deck where the naphthalene was placed as the weather deck.

[954] Q. There came a time, Captain, when all of the crew and yourself left the Black Gull? A. Yes.

Q. Could you fix that time in any way? A. The only way I can do it is by the time when we arrived on the Gripsholm.

Q. What time was that? A. About four o'clock.

Q. And about how long after you got off the Black Gull did you get on the Gripsholm? A. About half an hour to three-quarters of an hour.

Q. While you were still on board the Black Gull was an anchor dropped? A. After we had been forced down to the fore deck, I let go the starboard anchor.

Q. What was the purpose of that; for what reason? A. In order to keep the ship up against the wind and in order not to let the ship drift around.

Q. The first day you testified here you gave the latitude and longitude of the place of the fire. A. Yes.

Q. Can you tell us how far or approximately how far that place was from the nearest U. S. coast line? A. If I had a chart I could show you, but I be-[955]lieve it was about fifty to sixty miles.

The Court: Captain, when you fought the fire from the forward deck were you on the weather deck or were you on the forecastle?

The Witness: We were on the weather deck.

Q. In fighting the fire on the weather deck what was used to fight it? A. We used our fire hoses and foam extinguishing apparatus.

Q. Did the fire hoses continue in operation the whole time you were there? A. Yes, all the time we were on the after deck, and from the boat deck; and we also had one hose working when we were on the fore deck.

Q. Did you use any buckets on the fore deck? A. When the water gave out we used buckets on top of the naphthalene bags at No. 3 hatch.

Q. The first day you testified you were asked if there were electrical connections in No. 4 tweendecks, and you said no. What did you understand and mean by electrical connections? A. I meant that there were no contacts there were no contacts there to which we could connect other electric wires or fuses or lights.

[956] Mr. Pyne: The witness indicates with his hands.

The Interpreter: He means a contact.

Mr. Pyne: Talking about a switch, Captain Lynner?

The Witness: Yes, or switches.

The Court: Throw on and off a switch, is that it?

The Interpreter: Yes.

• • •

[957] Q. When you testified the first day here, in answer to a question from his Honor, you stated that in your opinion it would be impossible to comply with the Coast Guard regulations.

I would ask you, please, to explain fully what you meant. A. I would like to have the Coast Guard regulations.

Q. We can either use the one in evidence, or here is the identical full book rather than the photostats that are in evidence.

• • •

[958] A. Yes. The Coast Guard regulations say "on deck protected," and it further states that a ticles being carried on the open decks should be protected against the elements by structural erections or against the rays of the sun by sun roofs or the like.

Mr. Longley: By what?

• • •

The Interpreter: The witness adds "awnings."

A. (Continuing) As heavy weather must always be expected in the North Atlantic——

(The interpreter speaks with the witness.)

The Interpreter: I said "Just use the word 'awnings' "—he used it himself.

A. (Continuing) And as napthalene should, according to these regulations, be protected against rays of the sun, it would have to be by means of awnings [959] or dunnaging. As I already stated, you must always expect heavy weather in the North Atlantic, it will be impossible to keep such sun roofs. They would be torn down and they would also present a danger to the other cargo and to the tarpaulins on top of the hatches.

The same would be the case if dunnage were put on top of the bags, and as the cargo is supposed to be ventilated, the only way I could see that the cargo could be protected against the rays of the sun would be by awnings. If the cargo were to be protected by tarpaulins, ventilation would be prevented and the tarpaulins would also be exposed to wind and weather and on such large areas would be torn away.

• • •

Fritjov Andersen—For Petitioner—Cross

[960] Q. I think you told us that the starboard lifeboat was put in the water about one-half hour after the fire broke out; is that correct? A. Yes.

[961] Q. Then it is true, is it not, that within one-half hour after this fire broke out you were satisfied that the lives of your passengers were in danger? A. No.

Q. Why did you have the passengers—or I had better say, weren't the passengers put in the starboard lifeboat before it was put in the water? A. Yes.

Q. Well, why did you have them go in the lifeboat? A. I launched the starboard boat in order to have it ready if the fire should spread, to have it safe—in safety, if the fire should spread, and as I was of the opinion that the passengers—and as I wanted to have the passengers out of the way in case we should have to leave the ship in a hurry, I wanted to have them done right away.

Q. The passengers were safer at that time in the lifeboat than they were on the ship, isn't that so? A. At that time they were just as safe on board the ship but, as I told you, I thought it was better to have them out of the way.

Q. You told us the other day when you testified that you had four streams of water pouring onto the burning naphthalene on the after deck. Do you remember [962] that? A. Yes.

Q. Now you tell us you only had one stream playing water on the burning naphthalene on the forward deck. Why was that? A. The others were left there when the—as the fire spread in such a way that we could not disconnect them.

Q. Three hoses were left on the after deck, you mean, so that they burned up? A. Not on the after deck; the boat deck.

Q. Well, in any event, wherever they were, three hoses burned up and you had only one to play on the burning cargo on the foredeck? A. Yes.

Q. Captain, you took no part yourself in the stowage of this naphthalene either at Antwerp or at Rotterdam, did you? A. I supervised the stowage when I took my rounds on the deck.

Q. How often did you take your rounds on the deck during the stowage of the cargo, Captain? A. That is difficult to say.

Q. Well, you were ashore most of the time when the ship was in port, wern't you, Captain? [963] A. No.

Q. Did you stay on board the ship while the ship was in port at all times at Antwerp and Rotterdam? A. No.

Q. Well, how much time did you spend on the ship while this vessel was in port? A. (In English) It is impossible for me to say.

(To the interpreter) It is impossible for me to say.

Q. Captain, it has been my experience when a ship gets into port the master spends most of his time ashore. That is not true with you? A. No, and that is not—no, it is not true about other captains either.

Q. Well, all right. Now, after the ship sailed, Captain, do I understand that you went down and carefully examined this stow of naphthalene eight or ten times a day, or what did you do? A. No.

Q. Well, what did you do about examining it? A. I had my rounds on the deck every now and then.

Q. What does that mean, "every now and then"? A. That may mean once a day or once every other day.

Q. What was there about this naphthalene that [964] disturbed you, that caused you to make any particular examination of it, Captain? A. There was nothing frightening me, but I always have my rounds like that.

Q. Well, isn't it the truth of the situation, Captain, that as you walked over this ship you glanced at this stow, and

that is all you ever did about it? A. We see a lot when we take our rounds. They are not just glances.

Q. Did you get up on top of this stow and put your hands down between the bags to see that there were no crevices there, Captain? A. No.

Q. Now, some hour or so after the fire broke out you found out there was a fire in No. 4 'tween-deck, did you not? A. That was at a time when the No. 4 hatch covers had come on fire and the covers were fall down to the deck.

Q. Well, was it about an hour or so after the fire broke out, or how long afterward? A. I think a good hour.

Q. And you learned that on the bridge by your smoke detecting apparatus, did you not? [964a] A. I saw that No. 4 hatch was on fire and I saw the smoke on the smoke detector when I was on the bridge.

Q. And that is the first time that your smoke-detecting apparatus had shown you any fire in any under deck compartment, isn't that true? A. The first and only time I saw was smoke from the deck.

[965] Q. It was about an hour after the fire broke out? About? A. Yes.

Q. You have told us that the smoke detecting apparatus consisted of some tubes. They are glass tubes, are they not, up on the bridge, or at least transparent tubes? A. I have not opened it, but the tubes are clear.

Q. And they operate by having a little pump pull air from the various compartments from which those respective tubes lead; isn't that so? A. I would rather say a fan was going there.

Q. You are probably right. And you have on your detector apparatus on your bridge a tube leading to each hold and each 'tweendeck, do you not? A. Yes.

Q. You told us of the signs in the passengers' cabins. A. Yes.

Q. What language were they in? A. English.

Q. You spoke during the course of stowage of comparing with somebody, but I did not get the name. That was Captain Hollaar, was it not? A. Yes.

Q. And it was Captain Hollaar who laid out the stowage and arranged as to where it was to be stowed? [966] A. With my consent, yes.

Q. And Captain Hollaar is here in the courtroom? A. Yes.

Q. Now you have told us that in your opinion it was impossible to comply with the United States Coast Guard regulations in so far as concerns stowage and carriage of naphthalene. A. No.

Q. You did not say that?

The Interpreter: The answer is No.

Q. Do you mean you did not say that? A. I said that as regards carrying of naphthalene on deck it was impossible.

Q. And you are quite right. Why did you carry it on deck then, Captain? A. Because it is allowed to carry naphthalene on deck.

Q. You have told us that you could not comply with United States Coast Guard regulations in the stowage of naphthalene on deck, and I ask you, as you say you could not comply with the regulations, why did you carry naphthalene on deck at all? A. The Coast Guard regulations apply to all waters.

Mr. Longley: I do not quite follow that answer.

[967] The Interpreter: I am asking whether he had completed his answer.

The Witness: I will ask to have the question read again.

(Question read.)

Mr. Longley: May we have a recess at this time, and let the witness think that over, your Honor? He seems to want to give it a little thought.

The Court: Ask the witness whether he wants to do that.

The Witness: Yes.

The Court: The court will take a short recess.

(Short recess.)

Q. Captain, are you now ready to give your answer to the last question I put to you? Do you remember what it is? A. Yes.

Q. All right, let us have it. A. The Coast Guard regulations, as I said, apply to all waters, and the regulation about sun roof will have to be complied with in the hot regions, but in the North Atlantic we do not have such temperatures.

Q. Well, I do not follow what you are saying, Captain, but I want to press that. You knew when this [968] ship sailed that you were carrying naphthalene that violated the United States Coast Guard regulations, did you not?

Mr. Pyne: I object to that, your Honor. I think that is calling directly for a conclusion of law.

Mr. Longley: I am asking for his knowledge.

Mr. Pyne: No, you are asking on a question of law, and I say in the first place it is asking for a conclusion of law, apart from the fact that it is a question of law.

The Court: What difference does this witness's view of the law make, Mr. Longley?

Mr. Longley: His view of the law does not make any difference. Why he stowed it the way he did does make a difference.

The Court: That is not what you asked him.

Mr. Longley: I asked him if he knew.

The Court: Yes.

Mr. Longley: Not what the law was, but that he knew he was carrying it in violation of the law.

The Court: What difference does that make?

Mr. Longley: If your Honor does not want it, I won't press it.

The Court: All right.

• • •

[969] Q. Captain, you have told us the length of time that you served on vessels that served in the Black Diamond service. A. Yes.

Q. Did you receive these letters when you had your ships under Black Diamond service? And I show you these letters heretofore offered as Libelants' Exhibit 38 (handing to witness). A. I am sure I have received the two last ones. I think I have seen the first one, but I am not sure.

• • •

Q. You knew, did you not, Captain, that if tarpaulins were used in connection with the stowage of naphthalene that they would become impregnated with the odor of naphthalene? A. Yes, with the odor of naphthalene.

Q. And therefore the tarpaulins could never be [970] used again except in relation to naphthalene; isn't that so? A. Yes.

Q. And you had received instructions from Black Diamond in connection with the care to be used in connection with rope slings that had been used over a stow of naphthalene; isn't that true? A. Yes.

Q. And that was because the rope slings would become impregnated with the odor of naphthalene when used over the stow? A. Also because these nets were particularly for the use of naphthalene stows.

Q. And you received directions not to use dunnage wood under a deck load of naphthalene because the dunnage wood would become impregnated with the odor of naphthalene, isn't that true? A. I want the question again.

Q. (Question read.) A. Not particularly.

Q. Isn't there a letter there that deals with that, Captain, or is that the letter you did not receive? I am referring to this letter dated May 29, 1951, from Black Diamond Steamship Corporation addressed to all masters, deck officers, domestic and foreign agents, a part [971] of Libelants' Exhibit 38. Didn't you receive a copy of that letter, Captain? A. (Without interpreter) Yes, I did.

Q. And in that letter from the Black Diamond you were told not to place dunnage on the main deck prior to loading on deck naphthalene; isn't that true? A. (Without interpreter) Yes.

Q. And you were directed to stow it directly on the deck; isn't that true? A. Yes.

Q. Then you were told after the discharge of naphthalene all the dunnage is to be collected and set aside on the deck, secured, and later disposed of? A. Yes.

Q. You knew the purpose of that direction, did you not, Captain, is because the dunnage would become impregnated with the odor of naphthalene? A. That was one of the reasons.

Q. What is the other reason? A. The other reason was that naphthalene is stowed as well on the deck as on dunnage wood, if not better.

Q. The Coast Guard regulations, Captain, provide that naphthalene if stowed on deck may be stowed on deck under cover or on deck protected. You knew [972] that, did you not? A. I knew that naphthalene should be stowed on deck protected.

Q. Didn't you also know that the regulations permitted you to stow it on deck under cover? A. By reading the rules you will find that naphthalene shall be protected, not covered.

Q. No, I am not talking about that now, Captain. I say it provides that it may be put under cover, but in any event you had no means on the Black Gull of stowing the amount of naphthalene you were carrying under any superstruc-

ture; isn't that true? A. We had no superstructure of that kind.

Q. And of course you could not stow it in the forecastle? A. No.

Q. Or in the bridge house, or the poop, or a deck house? A. We had no such places.

Q. So the only thing you could do was to carry it on deck? A. Yes.

Q. Out in the open? A. Yes.

Q. Now you say it is impossible to comply with the Coast Guard rules. Reading from the Coast Guard rules, 146.03-34 (b):

> "On deck protected means the articles may be stowed on the open weather deck of a vessel. [973] It is required that dangerous cargoes stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnage."

Do you read English enough to follow that, Captain?

(Interpreted to witness.)

Q. (Continued) I also call to your attention, Captain, provisions of 146.27-6, reading:

> "Protection for On Deck Stowage. Hazardous articles that are permitted stowage on deck in open or on deck protected, may be protected by the use of structural erections, awnings or tarpaulins."

The Interpreter: We have no real equivalent to your word "hazardous."

Mr. Longley: Dangerous.

The Interpreter: No.

Mr. Langley: Use the word "hazardous" then.

• • •

[974] Q. You have told us that no effort was made to cover the naphthalene on the deck of the Black Gull with tarpaulins. A. Yes.

Q. And you have also told us that—— Do you want to add something, Captain? A. Yes. The Coast Guard regulations also say that naphthalene should be well-ventilated, and it cannot be well-ventilated if it is carried under cover.

Q. Well, that doesn't particularly answer my question, Captain, but I may tell you that I find nothing in the Coast Guard regulations providing what you have just said, but they will speak for themselves.

Mr. Longley: (To the interpreter) Will you put my question?

(The interpreter speaks to the witness.)

Q. You have also told us, Captain, that on the masthouse you had a stow of drums of chemicals that you did protect by a tarpaulin.

Mr. Pyne: I object to that, your Honor. The witness didn't say that they were on the masthouse. He said they were on the deck next to the masthouse.

Mr. Longley: No, on top of the masthouse.

• • •

[975] Q. Where were the drums of chemicals stowed? A. The drums of chemicals were stowed forward of the aft midshiphouse mast or along—or against the No. 4 hatch coaming.

Q. And you told us that those drums were protected by tarpaulins. A. Yes.

Q. And those tarpaulins were lashed to stay in place over the drums, were they not? A. Yes.

Q. Why couldn't tarpaulins be lashed over the naphthalene, Captain? A. They could have been lashed, but as I told you before, there would have been no ventilation.

Fritjov Andersen—For Petitioner—Cross

Q. Indeed you lashed tarpaulins over naphthalene, at times, you have told us, Captain? A. Yes.

Q. And you did that because you said one or two of the shippers asked for it? A. Yes.

Q. What did you do about ventilating that naphthalene that was covered with tarpaulins lashed down over it? A. The tarpaulin was put on top hanging down from [976] the sides.

Q. You mean it wasn't lashed? A. It was lashed.

Q. That tarpaulin was not carried off in any bad weather, was it, Captain, when you carried it over the forward deck? A. Yes.

Q. The tarpaulin was carried away? A. It was blown up, or torn up.

Q. That naphthalene, I think you told us before—and you will correct me if I am wrong—when you carried it, you carried it on the forward deck? A. Yes, it was carried on the forward deck. It was small parcels.

Q. Captain, don't we come down to this, that you didn't cover naphthalene with tarpaulins on this voyage of the Black Gull or on prior voyages because it was going to cost the carrier too much? A. No.

• • •

Cross-examination by Mr. Abberley:

Q. Captain, some of the passengers have stated that they were burned while they were in the starboard [977] lifeboat. I am sure that you had a very good reason for keeping the starboard lifeboat tied to the side of the Black Gull. A. Yes.

Q. Was that reason because you only had one lifeboat and you believed you might need that one lifeboat to evacuate the remainder of the crew? A. Yes, in case we should be obliged to leave the ship.

Fritjov Andersen—For Petitioner—Cross

Q. Captain, with respect to the port lifeboat, when the fire first broke out, how far abaft the port lifeboat was the fire, approximately?

(The interpreter speaks with the witness.)

Q. Look at the ship's plan; perhaps you can tell from that. A. (After examining) Approximately 25 feet.

Q. At first, did the fire spread rapidly in a forward direction, going towards the port lifeboat? A. I cannot tell because in the first moments I was fully occupied by managing the ship in order to have the wind in from the starboard side.

Q. How soon after the fire first broke out would you estimate it was when the port lifeboat caught on fire? [978] A. A quarter of an hour to twenty minutes, approximately.

Q. Captain, I understood you to testify that one of the reasons you did not see fit to launch the port lifeboat was because of smoke that was blowing over the port side of the ship, you having brought the wind around on the starboard beam, and I also understood you to say or indicate that you believed you might jeopardize or harm the passengers if you put them in the port lifeboat and lowered it over the side. A. Yes, sir.

Q. Would it not have been possible to lower the port lifeboat without putting the passengers in it? A. Yes.

Mr. Abberley: No more questions.

The Witness: May I go on?

Mr. Abberley: Yes.

The Witness: In any event, I would have to have crew in the boat.

• • •

Harvey Lyngaas—For Petitioner—Direct

[979] HARVEY LYNGAAS, called as a witness on behalf of the Petitioner, • • •

Direct examination by Mr. Pyne:

Q. Mr. Lyngaas, what is your occupation? A. Chief officer.

Q. Of what vessel? A. The Black Eagle.

Q. That vessel is in the Black Diamond Corporation service? A. Yes.

Q. And you were formerly a member of the crew of the Black Gull? A. Yes.

Q. In what capacity? A. I signed on as third mate.

Q. When did you sign on? A. In February, 1949.

Q. Did you remain an officer on the Black Gull from then down til the time of the fire in July 1932? A. Yes.

Q. Before going on the Black Gull did you serve on any other vessels in Black Diamond service? A. No.

Q. While on the Black Gull did you always remain third officer? [980] A. I was promoted in August 1939 to second officer and again to chief officer in 1951.

Q. Do you remember what part of 1951 you became chief officer? A. In April 1951.

Q. And you remained chief officer, then, on the Black Gull until the July 1952 fire? A. Yes.

Q. How long, all told, have you been going to sea? A. I started to go to sea in October 1937.

Q. And when did you first become a licensed officer? A. In 1947.

Q. And what license did you then receive? A. Mate certificate.

Q. Did you later have a master's certificate? A. I got it April 1952.

Q. So at the time of the Black Gull fire you were chief officer on that vessel but held a master's license? A. Yes.

Q. Have you remained in the employ of Sigurd Herlofsen & Company on vessels in Black Diamond service from the time of the fire down to the present? A. Yes.

Q. How many trips all told would you say between [981] European ports and the United States you have made on vessels in Black Diamond service? A. Thirty to 32—I am not quite sure.

Q. And on those voyages can you tell us approximately, or accurately, how many of the vessels carried naphthalene, crude naphthalene in bags? A. They all did.

Q. Did you yourself ever make a complete inspection of the Black Gull all over the vessel? A. Yes.

Q. How often did you do that? A. Every journey after the discharge of the cargo.

Q. When last prior to July 10, 1952, was it that you inspected the vessel all over? A. At Bremen.

Q. That was when she was discharging at Bremen and immediately starting this voyage on which the fire occurred? A. (In English) Yes.

Q. On the Black Gull, as chief officer, did you stand a regular watch? A. Yes.

Q. And what watch did you stand on the navigation bridge chart room—chart house? [982] A. From 4 to 8 a. m. and from 4 to 8 p. m.

Q. While you were on watch on the bridge did you, or could you and did you have a view of the decks of the vessel, both forward and aft? A. Yes.

Q. While you were on watch on the bridge did you remain in one place or did you move about? A. We are moving back and forth.

Q. Back and forth from where to where? A. (In English) From one side——

(Through the interpreter) From one side to the other.

Q. Now, during the voyage of the Black Gull on which this fire occurred, did you make any inspection or inspections of the cargo, and particularly the deck cargo? A. Yes.

Q. Now, would you tell us what inspection or inspections you made, when you made them and what you did? A. I

had one proper inspection round, only concerned with inspecting the cargo every day.

Q. And on that inspection would you tell us what you did in the way of inspection? A. I checked the nets, I checked the lashings by means of which the yacht had been lashed, I checked [983] the scuppers—I went along the bulwark and inspected the scuppers.

Q. Did you make any check of the fastenings of the stowage of naphthalene? A. Yes, I said so.

Q. Do you remember when last, prior to the outbreak of the fire on July 18th, you made such inspections of the cargo? A. That was between 10 and 12 a.m.

Q. On July 18, 1952? A. Yes.

Q. And what condition, generally speaking, did you find the cargo in, particularly the deck cargo? A. Everything was all right, or good order.

Q. Did you see on that inspection the appearance and condition of the stowage of naphthalene on the weather deck, fore and aft? A. The stowage was, if possible, more compact than when we left Rotterdam.

Mr. Longley: What was that?

(Answer read)

Q. I do not understand that answer. Please describe the appearance of that stowage of naphthalene, the top particularly, and the sides.

(The interpreter speaks with the witness.)

[984] The Interpreter: I asked him to repeat the answer because I didn't remember the beginning.

A. The stowage was the same as when we left Rotterdam, but during the voyage the bags will work themselves even closer together than they were at the time when they were stowed so that there were no openings between them.

Q. On the top were there any crevices between the bags on this last inspection? A. No.

Q. On the sides on this last inspection were there any crevices? A. None except those that were made when the cargo was stowed at Rotterdam for shipping water.

Q. Describe, if you will, what those crevices or spaces were and where they were. A. The bottom tier was stowed in such a way that between every third or fourth bag there was an opening, and the bags in this tier were stowed athwartship.

Q. Except for those openings on the bottom tier were there any other openings or crevices anywhere in the stow, top or sides? A. No.

Q. I will show you the log book of the Black Gull, [985] Petitioners' Exhibit E (handing to witness), and ask you whether or not there was any pitching and rolling of the vessel during this last voyage, and, if so, on what dates and watches? A. On the 12th July, on the 4 to 8 watch in the morning, we had some pitching with sprays overdeck and hatches.

On the afternoon watch from 12 to 16 I have written "some pitching."

On the evening watch from 4 to 8 I have written "some pitching."

On the 13th July, from midnight to 4 o'clock, "some pitching with spray over deck and hatches"—that's all.

[986] Q. Did any pitching or rolling of the vessel disturb or move the deck cargo? A. No.

Q. On the inspections of the cargo which you have stated you made daily, did you ever go below decks? May I amend that question, did you ever go below the weather deck? A. I opened hatch No. 4 and was down in the 'tweendecks.

Q. When was that? A. That was the day after we had the last pitching and that has been entered in the log.

Q. And what was the purpose of going down in that No. 4 'tweendecks at that time? A. On each side of the hatch in the 'tweendecks Armagnac was stowed.

Q. Is Armagnac a Cognac brandy? A. Yes.

Harvey Lyngaas—For Petitioner—Direct

Q. Was there anything in the way of cargo or other articles of any kind in the No. 4 'tweendecks besides that brandy? A. There were two slings of dunnage.

Q. And where were they located? A. There were two slings of dunnage, one was placed in the forward part of the hatch, the other in the after part of the hatch.

[987] Q. What condition did you find the casks of cognac brandy in on that occasion? A. In good condition, as they had been stowed at Rotterdam.

Q. Did you at any time enter the passengers' cabins on the Black Gull? A. Yes.

Q. Do you remember when last before the fire you entered any of the passengers' cabins? A. That was at Rotterdam the day before the passengers came on board.

Q. Did you go into one or more than one? A. I was in them all. May I add why I went into them?

Q. Yes. Why did you go there? A. I had assigned one of the crew to paint all the ventilators in the passengers' cabins, and I therefore went into them all to inspect what had been done.

Q. Can you tell us whether or not at that time there were any sign or signs in these cabins? A. There were two.

Q. Two in each cabin, do you mean? A. Two in each cabin, yes.

Q. Can you tell us what these signs stated, or their substance? A. One was concerned about mealtime. On the [988] same sign it was said to which lifeboat each passenger was assigned and where the lifebelts were kept; and there was as far as I remember a request to passengers not to smoke in the dining room. The other was a warning to the passengers not to throw cigarettes or cigars or matches, I don't remember the exact wording, out of the port holes or over the side.

Q. Have you completed to your best recollection the substance of both of those signs? A. Yes.

• • •

[989] Q. At the last session, Mr. Lyngaas, you were telling us about the signs in the passenger cabins. Out on the open decks anywhere on the Black Gull were there any signs relating to smoking? A. May I have the plan of the ship?

Q. Yes or no to that question first. A. Yes.

[990] Q. I will show you—and I am giving the witness now a clean plan with no marks on it, which is a duplicate of the plan already in evidence; they have had so many marks, your Honor, I think we ought to use a clean one now—and I will give you a red pencil and ask you if you will with that pencil mark the location of those signs which you say were on the deck. And put a red cross wherever they were. A. (Witness marking on plan.) One sign on each side of the companionway from the forecastle.

Q. State whether or not those signs on each side of the companionway were on the bulkhead or wall? A. Yes.

Q. Proceed if you will with the others. A. There was one sign here on the masthouse, the fore part; one here in the after part——

Q. Which masthouse are you now marking? A. The forward masthouse between hatch No. 1 and hatch No. 2.

Q. And as you go along will you not only mark but state for the record the places you are marking. A. Then we had one sign here on the masthouse between hatch No. 2 and hatch No. 3, one in the fore part and one in the after part. Then we had one here in the [991] fore part of the midship building; it was in the center of the midship building.

Q. Was it on the bulkhead? A. It was on the bulkhead. Then we had one here on the bulkhead right in front of the entrance from the gangway on the port side, and one likewise on the starboard side. Then we had one on the bulwark here by the boat deck. Then we had one in the fore part of the masthouse on the after deck and one in the after part of that masthouse, and one in the fore part of the poop, in the center.

Q. Was that on the bulkhead? A. Yes. These are all, as far as I can remember.

Q. Did you have anything to do with putting up those signs? A. The second officer and myself painted them together.

Q. Will you tell us how they read, what was stated on them? A. "No Smoking," in English.

Q. And the size of the letters was what? A. About five inches, I think, or 5½ inches.

Q. In height, top to bottom? A. In height.

Q. On this plan I am going to point out to you a structure which is shown on the forward part of the [992] weather deck. Was that structure on the Black Gull on this voyage? A. No.

Q. I will ask you if you will, so we can later identify it, to take this blue pencil and mark that structure that we are now talking about. A. (Witness marks "X" with blue pencil.)

Mr. Pyne: May I offer the diagram as an exhibit, your Honor.

(Marked Petitioner's Exhibit Z in evidence.)

[993] Q. During this voyage on the Black Gull on which the fire occurred, did you at any time ever see any person, passenger or member of the crew or anybody, smoking out in the open on any deck anywhere? A. No.

Q. With respect to the condition of the bags in which the naphthalene was on the deck, will you describe the appearance and condition of those bags as you saw them? A. They were stained and they were second-hand bags.

Q. There has been some testimony here, I think from one or two of the passengers, that at the beginning of the voyage they saw spillage of crystals and naphthalene on the deck, both the forward deck and after deck and in the space or passage between the hatch coamings and the stow of naphthalene. What can you say as to whether or not there was

any spillage of any naphthalene out of the bags at those places?

The Interpreter: May I please have that question read again.

(Question read.)

A. It is correct, there was some spillage of naphthalene because during loading the stevedores will use hooks when handling the bags and it is not to be prevented [994] that some bags will be torn and some naphthalene will come out.

Q. What was done about that, if anything? A. The decks was first swept up and then watered up.

Q. When? A. It was done the next morning. We left Rotterdam at about 11 o'clock p.m., and the next morning the bags were cleaned.

Q. After that was there any other or further spillage out of the bags onto the deck? A. No.

Q. At the last session you stated that you made daily inspections of the cargo and inspected the scuppers. Will you tell us how you inspected the scuppers? A. That was done by walking on top of the stow along the bulwark.

Q. And looking where when you walked on top of the stow? A. Looking down, of course.

Q. That is, between the fences of the bulwarks and the bulwark itself? A. Yes.

Q. Now as to the height of the top of the stow of naphthalene in the bags over the deck, what can you say or do you say as to that? A. Between 5½ and 6 feet.

[995] Q. And where were you when you first learned or heard of the fire? A. I was asleep.

Q. How did you learn of it and what did you do? A. One of the stewardesses who was in the bathroom in the after part of the midship house on the boat deck had discovered the fire and she came and woke me up and told me there was a fire.

Q. Where were you asleep? A. In my sleeping cabin which is in the midship building on the boat deck, on the starboard side in the fore part.

Q. And when you were awakened, where did you go, what did you do? A. I ran across the alleyway and out onto the boat deck on the port side and out on the deck. From there I went on to the bitt and on to the stow.

Q. What bitts did you go on to, which ones—and take the plan, if you will, Petitioner's Exhibit Z, and show us what bitts (handing witness). A. I came down here (indicating), and I went from those bitts on to the stow.

The Court: What is a bitt?

Mr. Pyne: It is a piece——

Q. Oh, what is a bitt?

(Witness speaks to interpreter.)

[996] The Court: Is it like a cleat?

The Interpreter: Well, I don't know that word.

Mr. Pyne: Well, if I may show the Court and counsel, a cleat is shaped like that on the deck (drawing).

Q. Do you want to make a diagram? Make it here (handing paper). A. This is the deck (drawing). On to the deck has been welded a plate (drawing). On this plate two pieces of iron, roughly 10 inches in diameter, in such a way that we can get the rope in here (indicating) and fasten it (drawing).

The Court: They are cylindrical in shape?

The Witness: (In English) Yes.

Mr. Pyne: May we have it for the record, your Honor, that the witness, when he testified, he pointed and said he came down here to this alleyway (indicating), where I will put a pencil line with an arrowhead at the end of it, and that he also pointed to the

bitts that he mentioned, on which I will put a red arrow (drawing), pointing to the bitts (handing to Court).

Q. Can you tell us where the forward end of the stow on the port side alongside of No. 4 hatch, was with respect to the after or second of those two bitts that you have marked? A. The stowage started about one foot aft of the aft piece of the bitts.

[997] Q. On that occasion that you got on top of the stow, will you describe what you saw? A. I saw there was a fire in some of the bags, approximately in the middle of the stow, about abreast or a little forward of the center of hatch No. 4.

Q. Now at that time did you see either the side of the stow, either the side near the hatch coaming or the side near the bulwarks? A. No, not then.

Q. Well, tell us what you did from that point on. A. As soon as I had got onto the stow, the crew were coming from the poop, from the poop house. I told them to connect the hoses on the deck and one was to run down into the engine room and order water and good pressure.

Q. That is, you ordered that man to do that? A. (In English) Yes.

Q. What then did you do, where did you go? A. I then ran back onto the boat deck, took out the hoses that are stored in the cupboard on the port side, connected those, and in a moment I was about to connect water with that.

Q. What occurred then? What did you do, where did you go? A. I took the hose down from the boat deck [998] and on to the weather deck, when I then came down in the front of the stow, at the front of the stow I could see this side of the stow and I could then see that it was burning, I think it was in the third bag from the top.

Q. Now on the top of the stow over that place where you saw the third bag from the top was burning, what was the condition of the top of the stow?

The Interpreter: May I please have that question read?

(Question read.)

(The witness speaks to interpreter.)

The Interpreter: The answer is "No," but I suppose it is difficult——

Q. Let me ask the question again.

You state that when you got down onto the weather deck you then had a view of the side of the stow, is that correct? A. Yes.

Q. Which side of the stow did you then see? A. The side abreast of No. 4 hatch.

Q. And with respect to that side what did you see? A. It was burning in the third bag from the top. There was no fire in the bags above but then up to the top of the stow.

[999] Q. Were you present when the starboard lifeboat was launched? A. Yes, sir.

Q. About how long would you say it was after you first heard of the fire that the starboard lifeboat was launched? A. Approximately half an hour.

Q. During the preceding half hour did you see the conditions on deck in the vicinity of the lifeboat? A. Yes, there were plenty of smoke and fog and I think that the port lifeboat came on fire about ten minutes after we had discovered the fire.

Q. What would you say as to the advisability or inadvisability or possibility of assembling the crew or passengers to launch the port lifeboat? A. I think it would have been bad seamanship to expose the passengers or crew to such conditions.

Q. Why would that be? A. The smoke was dense and there was plenty of fog coming down right in the place where the boats would have to be lowered.

Q. Coming back to the stowage, there were, were there not, some drums of chemicals stowed on the after deck? A. Yes.

Q. Where were they stowed? A. Stowed on the deck along the fore part of the masthouse, on the after deck and between the masthouse and the after part of the [1000] hatch coaming on No. 4 hatch.

Q. And between those drums and the hatch coaming was or was there not any space? A. There was a space about a foot.

Q. After the lifeboat was launched what was done, and where with respect to fighting the fire? A. We had four hoses playing, two on the boat deck and two down on the weather deck. I told the bosun to get hold of all the chemical fire extinguishers that he could lay his hands on and we used them but they were of no avail.

Q. How long approximately after you first heard of the fire was the fighting of the fire on the after weather deck continued? A. About an hour and a half.

Q. And from there what happened? A. We retreated to the boat deck.

Q. And what was done from there on? A. We continued playing water on the fire.

Q. How long did you continue fighting the fire from the boat deck or midships house? A. I think it was two and a half hours afterward we had to leave the midships house and go on to the fore deck.

Q. Are you talking about two and a half hours [1001] after the fire started? A. Yes.

Q. And from the boat deck or midships house how many hoses were used to fight the fire? A. We had three.

Q. From the midships house where did you and the rest of the crew go? A. We went down from the fore part of the bridge down onto hatch No. 3.

Q. Why did you do that? A. We could not stand it any longer in the midships house.

Q. Did you take any hose from the midship hose to the fore deck? A. I had one with me.

Q. Did you and the rest of the crew who were on board continue to fight the fire on the fore weather deck? A. Yes.

Q. How many did you have, one or more than one hose connected up on the fore weather deck? A. We had three connected up.

Q. Apart from those three which were connected up were there any other hoses available on the fore weather deck? A. There were two more.

Q. Of the three hoses which you had connected up did you use one or more than one? A. In the first place when we came down we tried to use the three of them, but we found out the pressure was so bad it was only enough [1002] for one.

Q. The engineers had left the engine room while you were still fighting the fire from the midship house; is that correct? A. Yes.

Q. Eventually you and all of the crew and master were forced to leave the ship? A. Yes.

Q. Where did you go then? A. We left the ship from the forecastle head, down into our lifeboat.

Q. The Black Gull's lifeboat? A. Yes.

Q. And where then did you go? A. We were then taken over to the Gripsholm. That is, the motor launch from the Gripsholm had arrived just when we were coming down from the forecastle head.

Q. Approximately what time was it, if you know, that you boarded the Gripsholm? A. It must have been around four o'clock.

Q. How long after you left the Black Gull was it approximately that you boarded the Gripsholm? A. I should think it took about half an hour from the time we came into the lifeboat until we came on board the Gripsholm.

Q. You have told us when you testified at the last session that you had made 30 or 32 trips from Europe to the United States on vessels which carried crude naphtha- [1003] lene. How did the manner or method of the stowage on those 30 or 32 trips compare with the Black Gull method of stowage? A. The stowage today is exactly the same as it was on the Black Gull.

Q. On the Black Gull on this voyage were the crew assigned to any lifeboat or lifeboats—that is, prior to the outbreak of the fire?

Mr. Abberley: Your Honor, I am going to object to this question as a leading question. If Mr. Pyne wants to lay a foundation for this, he is at liberty to do so, but I am going to object to that question.

The Court: Objection sustained.

Q. Do you know whether or not there were any notice or notices posted on the Black Gull on this voyage concerning lifeboats?

Mr. Abberley: I object to the question, your Honor, on the ground it is a leading question.

The Court: He would have to get some idea of what the subject-matter is. Objection overruled.

A. Apart from the sign in the passengers' cabins, there was one sign in the crew's messroom, one in the officers' messroom, and one in the alleyway outside the passengers' cabins.

[1004] Q. What was the content of those signs, in substance? A. They assigned each member of the crew to one particular boat, told them what their job would be in the boat, and it also gave instructions about fire drills.

Q. On the night of July 18, 1952, on the Black Gull, were you on the bridge, the navigation bridge, at the time of passing Nantucket Shoals Lightvessel? A. I came up as we were passing.

Q. What was the condition then with respect to sunset? A. The sun had set.

Q. Do you know approximately what time the sun had set that night? A. About 7 o'clock.

• • •

Cross-examination by Mr. Longley:

Q. From the time you came on deck after learning of the fire until the ship was abandoned, are you satisfied that you and the other men on the vessel made every possible effort to extinguish this fire? [1005] A. Yes.

Q. When you first went on deck and discovered the fire you had four hoses playing on the area where the fire was burning, did you not? A. Yes.

Q. And you also used fire extinguishers? A. Yes.

Q. At the time the area of burning on the top of the stow was some three feet in diameter, was it not? A. On the top, yes.

Q. And in spite of all of the efforts which you and your men directed, the fire spread through the stow with great rapidity, did it not? A. Yes.

Q. Eventually the naphthalene melted and a molten river of fire flowed over the after deck, did it not? A. Yes.

Q. And later that was true also of the forward deck? A. The naphthalene had not started to melt when we left the ship—that means on the foredeck.

Q. And then some hour or so after you came on deck when the fire broke out, you found that the fire had been communicated to the cargo in the ship's compartments aft, isn't that so?

• • •

[1006] A. Yes, it started to burn in the tarpaulin and hatch covers.

Q. No, I spoke of the cargo. It was about an hour later that the cargo in the compartments below deck started burning, isn't that so? A. I cannot tell because we had to withdraw to the boat deck, to the low bridge, about the time when the hatch covers on the No. 4 hatch had come afire.

Q. Had the speed with which this fire spread surprised you, Chief? A. Yes.

Q. You had received no warning, then, as to the great danger which the carriage of this cargo presented? A. No, I cannot say we considered it a great danger.

Q. And you had received no warning of danger from anyone from on shore? A. When I first started carrying this material back in 1949, I had a conversation with Captain Hollaar, but I cannot remember that it has been said that it was very dangerous.

Q. You have told us that you carried naphthalene [1007] on the deck of a number of different vessels on different voyages. A. Yes.

Q. And all of those voyages to which you refer were voyages of vessels in the service of the Black Diamond Line, were they not? A. Yes.

Q. And I gather from what you say that on these other voyages the naphthalene was stowed on deck without any covers? A. Yes.

Q. That isn't quite accurate, is it? Didn't you sometimes cover the naphthalene when it was stowed forward, that is, covered with tarpaulins?

• • •

A. We had one instance—it was a small cargo of 40 tons stowed on both sides of the foredeck, and those parcels were covered.

Q. They were covered with tarpaulins which were lashed down over the stow? A. Yes.

Q. And that stow that you covered the tarpaulins [1008] with was on the forward deck at the bow, isn't that so? A. No, it was right in the—it was on each side of No. 3 hatch.

Q. On the forward deck? A. On the forward deck.

Q. You had no trouble in bringing that cargo forward to New York, did you? A. Yes.

Q. What was the trouble? A. We didn't manage to keep the tarpaulins over the stow.

Q. "We didn't"?

The Interpreter: "We didn't manage."

Q. On this voyage of the Black Gull you had the tarpaulins lashed over some drums of chemicals on the after deck, did you not? A. Yes.

Q. You told us on Friday that this stow of cargo on the after deck, that is, the stow of naphthalene during the course of the voyage settled down and became very compact. A. Yes.

Q. What possible ventilation was there of the bags of naphthalene after the bags settled down, as [1009] you have described, and made a block of compact stowage? A. Nothing except that the wind would ventilate the sides, the top and underneath through the openings.

Q. That would afford ventilation on the outside of the block of the stow only, wouldn't it? A. Yes.

Q. This was a passage across the Atlantic where there was one day after another of bright sunlight, isn't that true?

Mr. Stonebridge: I object to that question, your Honor. The log speaks for itself on the weather.

Mr. Longley: Do you want to examine the log, Chief?

Of course, the log doesn't speak for itself but it is a self-serving declaration. I have no objection to him looking at it if he wants to.

The Interpreter: Do you expect me to translate this?

Mr. Longley: Oh, no, you don't need to.

The Court: Can you tell what the weather was every day without looking at the log?

The Witness: I cannot say exactly without looking at it, but I know that we had fog and we had rain and we did not have sun, bright sun, every day.

[1010] Q. All right, you had bright sun most of the voyage, most of the journey, didn't you? A. No.

Q. Well, let us look at the log book then (handing to witness). You tell us the dates on which you had sun and the dates on which you had fog. A. (After examining) We left on the 10th.

On the 11th it was hazy and foggy.

On the 12th it was overcast.

On the 13th it was lightly cloudy, overcast in the evening.

On the 14th we had rain squalls, later overcast.

On the 15th we had rain squalls again, hazy, and it cleared up on the 8 to 12 p.m. watch.

On the 16th, fog. It was foggy the whole day.

On the 17th we had fog, clearing up in the afternoon.

On the 18th it was clear and hazy in the afternoon.

Q. It would appear from what you have just told us that you had very little sun, that it was most of the time foggy and hazy. Is that what you are trying to tell us? A. Yes, according to the log.

[1011] Q. You swore to the exact opposite in Oslo, did you not?

The Interpreter: I did not get it.

Q. You swore to the exact opposite in Oslo, did you not? A. That I cannot say; I have no recollection.

Q. I lay before you the transcript of your testimony given at Oslo before the official Norwegian Board of Investigation. This is in Norwegian. The 7th paragraph there (indicating).

The Interpreter: The witness says—I am now translating word by word, but they also had mostly good weather and much sun on the last day before the fire.

Mr. Longley: That is not the translation we have been agreeing upon.

Mr. Pyne: I would like to have the entire translation, including the preceding sentence.

Mr. Longley: The whole thing is here.

Mr. Pyne: I am going to offer the whole.

Mr. Longley: I object to it, then.

Mr. Pyne: The whole of the witness's statement there, not taking out one little piece.

Mr. Longley: I am asking if he did not swear [1012] to this when he was examined under oath in Oslo.

Mr. Pyne: I say it is not fair to take out one small piece instead of the whole of it.

The Court: You will have your opportunity on redirect.

Mr. Longley: "They had some sea on the way so that some water may have sprayed on the deck cargo, but they mostly had good weather with much sunshine, and this was also the case on the last day before the fire occurred."

Q. Didn't you give that testimony at Oslo? Isn't that what the translation is?

The Interpreter: It is not entirely accurate.

Mr. Longley: Where does this translation come from, Mr. Zisgen?

Mr. Zisgen: That translation came to us from Ole Torleif Roed. In Oslo, in the early stages of this case, and during the week before this trial started, Mr. Pyne's assistant, Mr. Ryan, called me up and then came over to the office and made suggestions as to corrections in the translation.

My understanding was that excepting as corrected in pencil, his office was satisfied this is an accurate translation.

[1013] Mr. Stonebridge: As a party very much interested in this litigation, I do not know that I have ever seen the original nor a translation of the document they are discussing, and I most definitely

am not going to bind my client to a translation which may or may not be accurate.

The Court: Of course, counsel's agreement cannot change it.

Mr. Pyne: We do not dispute the translation. I am informed by Mr. Rein, your Honor, the original of this translation was one jointly made by the Norwegian attorney for the cargo and the attorney for the owner.

The Court: None of that will bind me, Mr. Pyne. I am interested in what the man actually says.

Mr. Pyne: Yes, but we are not disputing the translation as far as we are concerned.

Mr. Longley: Put to him my question and ask him if he did not give that testimony in Oslo.

The Witness: Yes.

The Court: May I ask the Interpreter whether he translated Mr. Longley's words or merely pointed to the Norwegian transcript of the witness's testimony.

The Interpreter: What I did, I interpreted [1014] Mr. Longley's words and pointed at the same time.

The Court: That seems to me ambiguous, if as you say Mr. Longley's is an incorrect translation of the Norwegian. So you tell us whether he said what Mr. Longley said or whether he said what the Norwegian says.

The Interpreter: Yes.

Mr. Longley: "Yes" to what?

The Witness: This one—pointing to the Norwegian paper.

Mr. Longley: I have no doubt of that. Perhaps, Mr. Interpreter, to meet his Honor's views, you tell us what you say is there different from what I have said.

The Court: You translate the Norwegian paper.

Mr. Longley: "They had some sea" is where I started.

The Interpreter: "They had had some seas on the voyage"—or under way, really—"so it may have been spread on the deck cargo, but mostly they had good weather with much sun also on the last day before the fire."

Mr. Longley: Well, that is what I read.

The Court: I thought you read it quite differently, Mr. Longley.

[1015] Mr. Longley: I do not know just what the difference is.

The Court: We can either ask the stenographer to read what you read, or you read it again.

Mr. Longley: I read this exactly from the translation. The only difference is "much sunshine," there is a comma here, "much sunshine, in effect during the voyage, and that also was the situation on the last day." Isn't that the sense of it, Mr. Interpreter?

The Court: I think that is the meaning. I have what the interpreter said and I have what you said, so you do not have to ask him whether it is the same. I will have to pass on it.

Mr. Longley: I will ask the interpreter, is there a comma there after "much sunshine"?

The Interpreter: No.

Mr. Longley: Well, would it be fair to ask the interpreter this: Isn't the sense of that statement that they had mostly good weather with much sunshine during the voyage?

The Interpreter: No.

Mr. Longley: That is not the sense of it?

The Interpreter: No.

[1016] Mr. Longley: It appears, then, the translation we have agreed upon this interpreter tells us is incorrect.

The Court: That is right. We will take a short recess.

(Recess.)

Q. Chief, I will ask you if you did not give this testimony which I point out to you in this transcript (handing to witness).

(Witness examines.)

Mr. Longley: While he is reading that, I will read you the translation, if your Honor please, which Mr. Rein has agreed is a proper translation.

"When the accident occurred the witness came on deck as soon as the alarm signal had been given, and he then saw fire and smoke approximately in the middle of the surface on the stow of naphthalene which was placed against the bulwark and had a width of about 17 feet. From this point the fire spread quickly."

A. Yes.

Q. Nowhere in the testimony at Oslo did you say anything whatever about seeing flames on the third [1017] tier of bags down from the top next to the No. 4 hatch, did you? A. No.

Q. What you said, which you have just read there, is what the situation was on this ship, isn't that so? A. This is what I saw when I came on the deck.

Q. And what you saw was a flame burning approximately in the middle of the top of the stow and you saw that flame spread quickly from the point where you first saw it, and that is all you ever did see, isn't it?

The Interpreter: May I have the question again?
(Question read.)

A. No.

Q. Why did you give the testimony you did at Oslo, Chief? A. What is here referred to is what I said about what I saw when I first came onto the deck afterwards—I had the hoses connected and when I had come down on the hatch, I saw it burning on the side.

Q. But you never told the Norwegian investigating officer who was interrogating you anything about that, did you? [1018] A. As far as I remember, there was no question about it. I was asked what I saw at the moment when I came on deck.

Q. Then you and the master and the second officer prepared a report about the fire, didn't you? A. Yes.

Q. There is nothing in that statement prepared by the master, you and the second officer that gives any information whatever about what you now say you saw when you had the hose, is there? A. Yes, but this is not detailed testimony.

Q. What is that? A. This is not detailed testimony.

Q. This is the statement which you, the master and the second officer prepared, isn't it—a report, I should say? A. Yes.

Q. And you were required by Norwegian law to prepare that report and give to the investigating officer, were you not? A. No, the captain has to make a report and I have to countersign it.

Q. You have to what?

(Answer read.)

[1019] Q. Well, this is the report which you did countersign isn't it? A. Yes.

Q. And this report says, in effect, that the fire started on the top of the stow on the port side, about halfway be-

tween the hatch coaming and the ship's bulwark and then spread?

Mr. Pyne: I object to that, your Honor. I don't think the report says that.

Mr. Longley: Well, that is my language. I am trying to give the sense of it.

Mr. Pyne: Why not offer the whole report? The report speaks for itself.

Mr. Longley: All right.

Mr. Pyne: If you don't, I will.

Mr. Longley: Is this the agreed translation now, or do you want this gone over?

Mr. Stonebridge: I would like an opportunity to have the translation checked.

Mr. Longley: That is all right.

Mr. Longley: And our attorney in Oslo went over it and agreed upon this, and I assumed that was that, but apparently there is some difficulty over it.

You weren't there at that time?

[1020] Mr. Stonebridge: I was not.

Mr. Longley: Certainly my brother has a right to examine it. But you have a copy of it now, do you not?

Mr. Stonebridge: I don't believe I have a copy of it. I have read a copy of it, but I don't have a copy of it.

Mr. Longley: Well, I will let that matter go for the moment, if I may.

Q. Chief, you commented that the bags of naphthalene stowed on the Black Gull were secondhand bags and showed stains on the exterior. A. Yes.

Q. The stains were oil stains, were they not? A. They were tarlike stains from the naphthalene.

Q. Let me see. Raw naphthalene—I guess the term is "crude"—crude naphthalene has a lot of creosote in it,

isn't that so, or don't you know? A. I dare not have any opinion on that.

Q. In any event, the stains you saw on the bags you knew came from the naphthalene? A. Yes, it has been like that on all cargoes we have had.

Q. And you put your hands on the stains and found them sticky, is that what you mean when you say [1021] it was a tarry substance? A. No, I smelt it.

Q. Smelled the stains, you mean? A. Yes.

Q. And those bags with the tarry stains on the exterior were that way when the bags were stowed at Antwerp and Rotterdam, isn't that so?

The Interpreter: May I have the question, please?
(Question read)

A. Not all of them.

Q. How many? How big a percentage? A. I cannot tell.

Q. Well, I won't try to stick you down to the percentage, but did most of them have the stains? A. Yes, of the ones I saw on the top of the stow, I should say that about 50 per cent had such stains.

Q. That did not come as a surprise to you because most of the naphthalene you had carried on prior voyages had similar stains, is that what you mean to tell us? A. Yes.

Q. You had met Captain Hollaar, did you not? A. On this voyage?

[1022] Q. Yes, on this voyage. A. Yes.

Q. He was on board at the time the stowage was going forward, both at Antwerp and at Rotterdam, isn't that true? A. Yes.

Q. And you and the captain went over the layout of stowage with Captain Hollaar, did you not? A. Yes.

Q. And Captain Hollaar was on board after the cargo of naphthalene had been stowed and made fast with the rope slings, isn't that true? A. Yes.

Harvey Lyngaas—For Petitioner—Cross

Q. This naphthalene gave off a strong odor, did it not, as the vessel lay both at Rotterdam and at Antwerp? A. Yes.

Q. And that odor continued, of course, throughout the voyage, did it not? A. Yes.

Mr. Longley: That is all, if your Honor please.

The Court: Mr. Lyngaas, you spoke of ventilation striking the outside of the stow?

The Witness: Yes.

The Court: Was there no ventilation through the spaces in the bottom tier which we are told existed [1023] after every third bag?

The Witness: Yes, I think I mentioned that.

Mr. Abberley: Your Honor, the witness testified to the effect that there was a "No Smoking" sign on the bulwark of the port boat deck.

I have spoken to Mr. Pyne about this and he has agreed with me that the record should show that such sign was not on the inboard side of the bulwark of the port boat deck but on the after or outboard side of the bulwark of the port boat deck.

Mr. Pyne: Yes, your Honor, we so agreed—that is what the witness stated, or at least intended to state.

The Interpreter: Shall I translate that for the witness?

The Court: No.

Mr. Abberley: It doesn't affect the witness, excuse me.

Cross-examination by Mr. Abberley:

Q. Mr. Lyngaas, you have testified that you left the Black Gull sometime after 4 o'clock in the morning of July 19th, is that correct? A. Between half-past three and four.

• • •

[1024] Q. You have testified, have you not, that you often made inspections of the cargo? [1025] A. The deck cargo.

Q. The statement in the lower part of that paragraph reading:

> "During the voyage the witness had not inspected the cargo except that one day, probably a few days before the fire occurred, he took up one of the wooden hatches in hatchway No. 4 on the middle deck and looked into the lower hold where everything was then apparently in order."

A. Yes.

Q. Is that an accurate translation to the effect that you had not inspected the cargo except that one day, probably a few days before the fire occurred? A. By this is meant the cargo in the holds, not the cargo on the decks.

Q. Mr. Lyngaas, when you first heard the alarm and you ran out on deck, which deck did you first run to? A. I came out onto the boat deck on the port side.

Q. And how long did you remain on the port boat deck? A. I ran across the boat deck and down onto the weather deck.

Mr. Abberley: Will you ask the witness to answer my question—how long did he remain?

[1026] A. I ran across and it may have taken up to, say, half a minute to do it.

Q. Then did you run down the ladder and out onto the weather deck? A. Yes.

Q. And how long did you remain on the weather deck? A. Twenty, thirty seconds, perhaps, before I went back again.

Q. And where did you go back to after you left the weather deck? A. Up onto the boat deck again.

Q. Which side of the boat deck? A. The port side.

Q. And how long did you remain on the port side of the boat deck on this occasion which you are describing? A. I cannot possibly say how long it took. What I did was to take the hoses out of the cupboard, to connect them and to bring the hoses down onto the weather deck.

Q. Can you estimate the time? A. I cannot.

Q. At that point, that is, when you were preparing the hoses, how far away was the fire from the after end of the port lifeboat? A. I would say about 15 feet.

[1026a] Q. And which way was the smoke—in which direction relative to the ship was the smoke leaving the ship? A. The smoke was coming off the port side, with a small share forward.

Q. Had the wind been brought around to the starboard side of the ship at that time which you are now describing, that is, when you were connecting the hoses? A. The wind was on the starboard side, yes.

[1027] Q. So I understand your testimony at this point to be that in something over a minute and a half to an unknown period of time which you don't care to estimate, the wind was brought from the port bow around to the starboard beam; is that correct? A. Yes.

Q. After you connected these hoses, what did you then do? A. I carried them down to the weather deck and played water on the naphthalene from there.

• • •

Q. As you were playing the hoses were you standing inboard and forward of the fire? A. Yes.

Q. Did you see the fire from that position spreading towards the port lifeboat? A. No.

Q. How far were you from the fire as you were playing the hoses? A. Approximately five or six feet.

Q. When did the fire start to spread towards the port lifeboat? A. About ten minutes afterwards, I was told by the second officer who was on the boat deck.

Harvey Lyngaas—For Petitioner—Cross

[1028] Mr. Abberley: No, strike that. (To interpreter:) Will you please ask my question and ask the witness to answer my question directly.

The Interpreter: May I have the question. (Question read as follows):

Q. When did the fire start to spread towards the port lifeboat? A. Approximately ten minutes after the fire had been discovered.

Q. And you say that you were standing there five or six feet from the fire, fighting the fire, and you did not see the fire spreading toward the port lifeboat, even though by that time you had been on the deck say from three to four minutes? A. From the position where I was standing on the deck I could not see the fire spreading to the lifeboat.

• • •

Mr. Longley: I will merely offer, if I may, in Norwegian, the declaration signed by the master, first and second mates, and I assume thereafter we can agree upon a translation.

Mr. Pyne: Yes.

Mr. Longley: Perhaps the original better be marked, in Norwegian. This statement to which I refer is marked "Dok, 4," which as I understand means document [1029] 4, appearing on pages 7 to the top of page 9 on this document in Norwegian marked at the top "Oslo Byrept." What does that mean?

The Interpreter: Oslo Crown Court.

Mr. Pyne: It is part of the maritime declaration. No objection.

(Marked Libelants' Exhibit 46.)

Harvey Lyngaas—For Petitioner—Cross

Cross-examination by Mr. Stonebridge:

Q. Chief, we have had a lot of talk about this maritime declaration and the official board of inquiry in Oslo. Does that document which has just been marked contain your exact words or what is it? A. I gave my testimony in full to the judge, and he writes it down afterwards.

• • •

[1030] Q. Then in essence what is purported to be your statement is in fact a summary of your oral testimony; is that correct? A. Yes.

Q. Referring specifically to the disputed passage concerning the weather, do you now have a recollection of the type of weather you encountered on the Black Gull voyage of July 10th to 18th, 1952? A. I could not remember every day until I had refreshed my memory from the log.

Q. To the best of your recollection does the log or the disputed translation in the maritime declaration more accurately define or describe the weather you encountered?

The Court: Just a minute. Have we any idea that he knows what the Norwegian is, is a disputed translation?

Mr. Stonebridge: I believe it was brought before him, your Honor, when it was discussed before. (To interpreter:) Will you find that statement or paragraph.

[1031] The Court: What you are showing him now is the Norwegian?

Mr. Stonebridge: That is right, your Honor.

The Court: What I am interested in is whether he knows the difference between the Norwegian and the disputed translation. You asked him about the disputed translation.

Mr. Stonebridge: (To interpreter) Will you put that question.

(Interpreted by the interpreter.)

Harvey Lyngaas—For Petitioner—Cross

The Witness: As far as I understand the English translation I am supposed to have said that we had sun every day, while in this Norwegian text I have said that we had sun on the last day.

Mr. Stonebridge: There is a question.

The Court: Yes, now read the question.

(Question referred to read by reporter as follows):

Q. To the best of your recollection does the log or the disputed translation in the maritime declaration more accurately define or describe the weather you encountered? A. Of course the logbooks give a reliable picture.

Q. Thank you. Chief, you have had questions asked in your cross examination by Mr. Longley concern- [1032] ing the one incident where you carried a shipment on deck, a shipment of naphthalene on deck, covered with a tarp. Now I ask you whether you had any trouble on any other voyage than the Black Gull, on shipments of crude naphthalene stowed on deck uncovered? A. No.

Q. Did you have aboard the Black Gull a file of operating orders and letters of instructions from Black Diamond Steamship Corp.? A. Yes.

Q. Chief, is it not normal procedure while at sea for the cargo officer of the vessel to periodically check the lashing of deck cargo? A. Yes.

• • •

Mr. Pyne: Your Honor, with the permission of all counsel may I state that last week at my suggestion a cablegram was dispatched from Black Diamond New York to their Rotterdam agent, asking whether they had any record of the cabins by number occupied by the particular passengers, and a cable was received in reply.

• • •

Harvey Lyngaas—For Petitioner—Cross

• • • With the permission of counsel I will [1033] read the reply:

"Passengers occupied following cabins:

1. Spanderman-De Nobel.
2. Furger and Muller.
3. Driesprong couple.
4. Miss Driesprong.
5. Leeson couple."

Now in petitioner's case, your Honor, we have called every officer or member of the crew of the Black Gull at the time of the fire who is now or during the currency of this trial has been in the employ of either Skibs Jolund, the vessel owner, or their managers, Sigurd Herlofsen & Co., with the exception of one man, a sailor, and he is and has been throughout the trial at sea, and further, that man was not on watch or on deck when the fire started.

May I also for the record state—and I assume their can be no question about it—that the maritime declaration shows the cargo attorneys—I think perhaps it is already in the record—had present at the declaration an attorney representing them. Mr. Rein informs me and will so state or testify, if need be, that following the usual procedure in the declarations, these attorneys are permitted, and the cargo attorney did in fact question [1034] the various witnesses.

Now there are three witnesses in the Maritime declaration who are not in our employ, of our clients or managers, and have not been for a long period of time. Their testimony is in the maritime declaration. I am ready to offer it. I do not think it is going to add anything to the record, but I make that offer and make those statements, because if we are at any time to be confronted with any suggestion or criti-

cism, that we have failed to produce anybody, I would like to hear it now.

We have produced everybody we could, and unless I hear some comment on that score, I then, your Honor, will rest the case for the petitioner. Except, of course, too, I have still some Dutch translations to produce that I mentioned during the course of the examination, and they are not yet completed, your Honor, and I will produce them later.

• • •

[1353] JOSEPH MAZZOTTA, called as a witness by the libelants in rebuttal:

• • •

Direct examination by Mr. Zisgen:

Q. What is your occupation, Commander Mazzotta? A. Commander of the United States Coast Guard.

Q. How long have you been in the Coast Guard? A. Thirty years in August—in October, this next October.

Q. Twenty-nine years and something, is that right? A. That is right, 29 years and 4 months.

Q. In July 1952 where were you stationed? A. I was commanding officer of Port Security Unit, Pier 9.

Q. That is Pier 9—— A. East River, New York.

Q. New York City? A. That is right.

Q. At that time how long had you held that position? A. Since November 20, 1950.

Q. Now, what did your duties include in that position at that time, speaking very generally? A. My duties generally were to see that the [1354] captain of the port duties —the policies were carried out—the Port Security laws, dangerous cargoes and explosives law were carried out with the forces available.

Q. When you say "dangerous cargoes," what do you refer to? A. I refer to the gray book, what is known as the gray book, CCG-187. It is 46 U. S. Code.

• • •

[1362] *Cross examination by Mr. Pyne:*

Q. Commander, I am going to show you a copy of this gray book that you referred to (handing to witness). A. Yes.

Q. I think you called it CG-187. A. Yes.

Q. That is the book that I am now showing you. A. Yes.

Q. There has been testimony here that that book covers a number of commodities. A. Practically every commodity that is shipped.

Q. Do you know exactly how many commodities? A. No, I do not.

Q. Well, I will refer you, if you will, to pages N-34 to N-49. A. (Examining).

Q. Those pages, in more or less fine print, alphabetically list the commodities referred to in that book, do they not? A. That is correct, sir.

Q. Now, I have taken those pages, Commander, and counted 22 in all, and I have just taken at random [1363] one page and counted 49 items on that one page and I have come to a total of 1,078 articles.

Would you say that that would probably be a fair approximation, without counting up each page and each article? A. If you are a statistician, I would say yes.

If you are not, I would have to take your word for it.

Q. Now, among those articles in turn, Captain—and if you will turn to the page beginning N-98—they are in a portion referred to in different classifications and tables. A. (After examining) Yes, sir.

Q. Now, Table A is Class A, dangerous explosives, is it not? A. That is correct.

Q. And then Table B, beginning on page N-107—that is Class B, "Less Dangerous Explosives," is it not? A. That is correct, sir.

Q. And Table C, or Class C, "Relatively Safe Explosives"? A. That is correct.

Q. And the next table, D, is "Inflammable Liquids" on page N-125. A. That is correct.

Q. And following that is Table E with "Inflammable [1364] Solids and Oxidizing Material"—page N-177, starting there. A. That is right.

Q. Table F, starting at page N-220, is "Corrosive Liquids." A. That is right.

Q. Table G, "Compressed Gases," page N-245, starting there. A. That is right.

Q. And Table H, Class A, "Extremely Dangerous Poisons," starting at page N-258. A. That is right.

Q. And Table H, Class B, "Less Dangerous Poisons"—starting at page N-264. A. That is correct.

Q. Table H, Class C, "Tear Gas or Irritating substances"—starting at page N-296. A. I have here on page 296 Table H, Class B, "Less Dangerous Continued."

Q. Does it say "Tear Gas"?

There is Table H, Class B, "Less Dangerous Poisons." A. Oh, yes.

Q. And then following that Table H, Class C, [1365] page N-296. A. Yes.

Q. And that table is "Tear Gas or Irritating Substances." A. That is correct.

Q. And then the next one is Table J, "Combustible Liquids" starting at page N-301. A. That is correct.

Q. Now, following that, Commander, comes Table K entitled "Hazardous Articles"—isn't that true? A. Yes.

Q. And then in that Table K, naphthalene is included, is it not? A. That is correct.

Q. Now, isn't it a fact that of all those cargoes mentioned throughout the entire book, the least dangerous are

those that are taken as a class in Table K under "Hazardous Articles"? A. That is correct.

Q. And isn't it also true, Captain, that the definition for "on deck protected"—and I call your attention now to page N-18 for that definition. A. (After examining) That is correct.

Q. You can correct me if you need to, Captain, [1366] but that definition will refer to the term "on deck protected" wherever in any and all of those tables we have mentioned the words "on deck protected" are mentioned, isn't that true? A. Yes.

Q. And it is mentioned in "Inflammable Liquids"? A. Yes.

Q. It is also mentioned in "Inflammable Solids and Oxidizing"? A. Yes.

Q. And it is also mentioned in Table E, "Corrosive Liquids"? A. That is correct.

Q. And also in Table F, "Compressed Gases"? A. That is right.

Q. And in Table G, for "Extremely Dangerous Poisons." A. That is right.

Q. And in Table H, Class A, for "Less Dangerous Poisons"? A. That is right.

Q. And of course it is mentioned, naphthalene and other articles, in—— A. K.

Q. ——Table K? A. Yes.

• • •

Petitioner-Appellee's Exhibit C

BLACK DIAMOND LINES
39 Broadway, New York 6, N. Y.
Telephone: DIgby 4-7040

TERMS OF CONTRACT WITH PASSENGER

IT IS MUTUALLY AGREED between Black Diamond Steamship Corp. (hereinafter referred to as the Line) and the passenger named herein (hereinafter referred to as the passenger) that in consideration of the payment to the Line by the passenger of the passage money indicated below, the Line will provide the passenger with passage as stated herein, unless prevented by some unforeseen circumstance, on the terms stated herein, both numbered and unnumbered, which form the contract, and shall govern the relations between the Line and the passenger in every possible contingency wheresoever occurring and even in the event of deviation or unseaworthiness of the vessel at the inception of the voyage or subsequently and whether or not this ticket has been signed by or on behalf of the passenger.

• • •

1. The word "Line" when used in this contract ticket, shall be deemed to include the shipowner, charterer, the vessel, the Master, agents and operators, and all or any of them.

• • •

17. All limitations, exceptions and conditions herein contained as to the liability of the Line shall apply also to the agents, employees and other representatives of the Line.

18. It is intended that all the terms of this contract shall be valid, enforceable and available to the Line so far as and

wherever the law will permit even where there has been negligence for which the Line is chargeable, and that in all instances where it may be possible to contract against the consequences of negligence, the Line, although negligent, shall not be under any liability whatsoever.

19. The Line shall not be liable for any claim whatsoever, whensoever and howsoever occurring, arising from any cause of whatsoever kind unless caused by the Line's negligence. The burden of proving negligence shall be on the party asserting it.

20. The steamship is not specially fitted or equipped for the carriage of passengers and the Line does not hold the vessel out as a passenger steamer or as being engaged in the transportation of passengers and the passenger is received for transportation at his or her own special request with knowledge of the foregoing circumstances. The Line, in respect of the passengers, does not undertake and shall not be held to, the obligations of a passenger carrier, and shall not be bound to afford any accommodations, facilities, victualing, etc., other than those which are usually available on this steamer. No Doctor or Nurses are provided.

• • •

Petitioner-Appellee's Exhibit D-2

Abstract of the log book for BLACK GULL for the time 3-18th July 1952

Date 1952	Place	Temperature in degrees Celsius 0-0400	0400-0800	0800-1200	1200-1600	1600-2000	2000-2400	Weather Wind	Force	Description
July 3	Antwerp			19				NW	2	overcast
" 4	"			20				NW	4	cloudy with rain squalls
" 5	"			28				NW	3	cloudy
" 6	"			30				SE	3	lightly cloudy
" 7	"			27			18	S-W	1-2	lightly cloudy
" 8	on voyage to Rotterdam	18	19	31				NW	3	clear—cloudy
" 9	Rotterdam			27				SW	3	lightly cloudy
" 10	"			26			14	SW-W	3	cloudy—lightly cloudy
" 11	on voyage to New York	17	16	18	17	17	16	SSW-SW	4-6	hazy with fog banks—later cloudy
" 12	"	16	17	17	18	18	17	WNW-NW	5-6	lightly cloudy—cloudy—overcast
" 13	"	18	21	22	20	19	17	W-WNW	6-5	clear—cloudy
" 14	"	17	16	22	21	19	18	WNW-S	4-0-4	cloudy—overcast rain squalls
" 15	"	19	20	22	23	20	19	SE-ESE	3-4	overcast—rain—hazy
" 16	"	20	19	18	19	17	17	E-W	3	hazy—fog banks
" 17	"	17	16	23	22	21	22	SW-WNW	3-6	fogbanks—clearing
" 18	"	19	20	25	23	22		WNW-W	5-3	clear—lightly cloudy—hazy

A 414

19	20	25	23	22	WNW-W	3-5	clear—lightly cloudy—hazy

Petitioner-Appellee's Exhibit G

SIGURD HERLOFSON & CO. A/s
OSLO

REPORT ON LOADING AND DISCHARGING

M/S ..... loaded / discharged in .....

a cargo of .....under charter party dated.....

on a voyage from .....to .....

Charterers .....Local agents .....

	Date	Time	
The vessel arrived			Local ordinary working hours:
The vessel docked			Quantity of cargo:
Notice handed in			
Time to co .t from ...			
Loading / Discharging commenced ..			Laydays:
Loading / Discharging completed ...			Demurrage: / Despatch:

Date	Day	Time worked from	Time worked to	Overtime hours	Overtime minutes	Number hatches	Number gangs	Quantity loaded	Quantity discharged	Remarks

Worked altogether.....hours. Discharged altogether.....tons.
Loaded altogether.....tons.

.....the.....19....

....
1st officer. Master.

(Any additional information should be given on the next page.)

Petitioner-Appellee's Exhibit H

SIGURD HERLOFSON & CO. A/S
OSLO

VOYAGE–REPORT

Report No. .....19...

M/S..... Gr. reg. tons.....Dw. tons.....

Voyage from..... to.....loaded/in ballast

Departed from quay, the.....at.....hrs. assisted by.....tugs.

Passed the pilot station outward bound.....the.....at....hrs.

Arrived the pilot station inward bound.....the.....at....hrs.

Distance between pilot stations.....nautical miles. Time used from the Pilot Station.....

Distance between pilot stations observed.....nautical miles to pilot station.....days.....hours.

Distance between pilot stations logged.....nautical miles. Stops at sea.....days.....hours.

Logged average speed....knots. Usual speed of the vessel, loaded/in ballast.....knots.

Greatest distance noon to noon.....nautical miles length of day .....Speed per hour.....

Smallest distance noon to noon.....nautical miles length of day .....Speed per hour.....

Draft: Departure Form.....Aft.....Mean.....Arrival Form..... Aft.....Mean.....

Bunkered, (date).....tons. Bunkers on board on departure .....metric tons.

Daily bunker consumption.....tons. Bunker consumption during the voyage.....metric tons.

Bunkers on board on arrival.....metric tons.

INFORMATION (other than stated above),

....
Chief officer. Master.

Petitioner-Appellee's Exhibit I

A/S "Black Gull."

Passengers Account voyage no. 20.

Eastb.	3 adults	9⅔ day á $ 6.00 per day	= $	174.00
Westb.	2 "	9⅓ " " " " " " "	= "	112.00
		Total $		286.00

New York April 14th 1952.

S. SÖRENSEN.

S. Sörensen
Master.

cc. Black Diamond Steamship Corp. 3
Sigurd Herlofson & Co A/S 1

Petitioner-Appellee's Exhibit J

To be produced when signing on or discharging crew.

Translation.

SPECIFICATION OF CREW
for
M/S "BLACK GULL" Home port Oslo
Code Letters L N F M

Gross tons	*Material*	*H. P.*	*Consumption of coal[1] tons pr. 24 hours*	*Number of furnaces*	*Number of main engines*	*Electric plant in kw.*	*Electric steering engine and winches*
4929	steel	8000	—	—	1	600	yes

According to the Manning Regulations for Norwegian ships the manning of the above named cargo ship in foreign trade shall besides the master, consist of at least:

mates 3 boatswain 1 carpenter — able seamen 4 ordinary seamen 3 boys 1 novices 2 wireless operators 1[4] engineers 3 (in tropical waters 3) assistant engineers 1 donkeyman — fireman and coal trimmers — coal trimmers — (in tropical waters —) motormen 5[5] oilers 3[5] engine room boys 2 electrician 1 pumpman — steward 1[2] cooks 1[2] galley boys 1[2] mess boys 2[2] cabin boy—maid —[3]

---

[1] According to specification from the ship. — Calculated, in the absence of specification from the ship.

[2] This galley and messroom personnel is required in respect of the crew of the ship and is computed on the basis of the remaining crew prescribed in this specification. If the crew on board is more numerous, care shall be taken that the composition and number of the galley and messroom personnel comply with the Manning Regulations, § 8, section 1.

[3] In cargo ships which have on board at least 6 passengers, there shall in addition be at least one cabin boy or cabin maid.

[4] May be combined with some other position on board.

[5] May be combined with position as repairer or refrigeratorman.

Petitioner-Appellee's Exhibit J

If special circumstances should necessitate a more numerous manning than prescribed by the Manning Regulations, the master is responsible for signing on a sufficient crew. (Cfr. the Maritime Law, § 26).

Division of Navigation, Oslo, March 17th. 1951.

(signed) E. GETZ.

Petitioner Appellee's Exhibit L

DET NORSKE VERITAS
ADMINISTRASJONEN

Telegramadresse: Veritas
Telefon 42 18 66 (Sentralbord)

Codes:
Boe Code
The New Boe Code
A. B. C. Fifth Edition
Scott's—Sixth Edition 1885
Watkins' and Appendix
Bentley' Code

Checks Utstedes Til "Det Norske Veritas"

JH/AB.

OSLO, Den 11. juli 1955.
Postboks 82

Skips—A/S Jölund,
Sigurd Herlofson & Co. A/S,
Oslo.

M/S "BLACK GULL"

Vi henviser til telefonsamtale den 9.ds. og meddeler at vi for skipet har följende rapporter i vårt arkiv:

Bygningsbeskrivelse for skroget, datert Landskrona 12/5-1948
Bygningsbeskrivelse hovedmotorer, datert Landskrona 12/5-1948
Bygningsbeskrivelse hjelpemotorer, datert Landskrona 12/5-1948
Survey and Description of vertical boiler, datert Annan, Scotland 23/6-47
Beskrivelseog rapport for elektrisk anlegg, datert Landskrona 12/5-1948.
Utrustningsliste, datert Landskrona 24/4-1948
Liste over reservegods for havneaggregat, datert Landskrona 7/4-1948.

Petitioner Appellee's Exhibit L

Besiktelsesrapport, datert Göteborg 1/12-1947
" datert Landskrona 27/4-1948
" " " 12/5-1948
(3 stk.)
Seaworthiness Certificate, datert Karachi, 29/7-1948
Survey Report, datert Karachi 30/7-1948
Bunnbesiktelsesrapport, datert Antwerpen 25/9-1948
Survey Report, datert Glasgow 23/8-1948
" " , datert Karachi 6/5-1949
Rapport datert Karachi 5/5-1949
Bunnbesiktelsesrapport, datert Landskrona, 24/8-1949
Besiktelsesrapport, datert Landskrona 23/8-1949
" " " 24/8-1949
(2 stk.)
Rapport for periodisk besiktelse, datert Landskrona 24/8-1949
Besiktelsesrapport, datert Landskrona 24/8-1949
" , " Rotterdam 27/8-1949
(2 stk.)
Besiktelsesrapport, (havari), datert Landskrona 24/8-1949
Survey Report, datert New York, 13/9-1949
" " , " 2/11-1949, New York
" " , " New York 20/12-1949
" " , " " " 1/2-1950
Bunnbesiktelsesrapport, datert Antwerpen 18/2-1950
Besiktelsesrapport, datert 20/2-1950 (2 stk.)
Survey Report, datert New York 15/3-1950
" " , " " " 26/4-1950
" " , " " " 7/6-1950 (2 stk.)
" " , " Baltimore Md. 2/6-1950
(2 stk.)
Seaworthiness Certificate, datert Norfolk 28/5-1950
Survey Report, datert 22/7-1950
Sjödyktighetsattest, datert 5/8-1950
Bunnbesiktelsesrapport, datert Rotterdam 15/8-1950
Propeller-Besiktelse, datert Landskrona 9/2-1948

Petitioner Appellee's Exhibit L

Besiktelsesrapport, datert Rotterdam 15/8-1950
Survey Report, datert New York 10/9-1950
Donkey Boiler Survey, datert Baltimore 8/9-1950 (Exhaust fired)
Survey Report, datert New York 4/11-1950
" " , " " " 3/11-1950
" " , " " " 24/10-1950
Propeller-Survey, datert Yoker, Glasgow 29/11-1950
Survey Report, datert New York 27/12-1950
" " , " Philadelphia 20/12-1950
Bottom Survey, datert Hamburg 19/1-1951
Donkey Boiler Survey (oilfired), datert Hamburg 19/1-1951
Survey Report, datert Hamburg 19/1-1951
" " , " Philadelphia 22/2-1951
" " , " New York 1/3-1951
" " , " Philadelphia 22/2-1951
" " , " New York 12/4-1951
Loading Certificate for insulated chambers and refrigerating Machinery, datert New York, 4/6-1951.
Survey Report, datert Baltimore, Md. and New York, N. Y. 31/5 & 4/6-1951
Survey Report, datert New York 4/6-1951
" " , " Bremen 13/8-1951
Seaworthiness Certificate, datert Boston, Mass. 18/7-1951
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 25/7-1951
Seaworthiness Certificate, datert New York 7/9-1951
Survey Report, datert New York 10/9-1951
Bottom Survey, datert 14/9-1951, Baltimore
Survey Report, " New York 22/9-1951
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 20/9-1951
Besiktelsesrapport, datert Antwerpen 11/10-1951
" , " Rotterdam 16/10-1951
(2 stk.)

Petitioner Appellee's Exhibit L

Loading Certificate for insulated chambers and refrigerating machinery, datert New York 17/11-1951
Bottom Survey, datert Baltimore 13/11-1951
Survey Report, datert Baltimore 7/11-1951
" " , " " 8/11-1951
Donkey Boiler Survey (exhaustfired), datert Baltimore 13/11-1951
Besiktelsesrapport, datert Antwerpen 18/12-1951
Survey Report, datert Hamburg 8/12-1951
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 16/1-1952
Survey Report, datert 17/1-1952, New York
Loading Certificate for insulated chambers and refrigerating machinery, datert 13/2-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 6/3-1952
Survey Report, datert New York 6/3-1952
Besiktelsesrapport, datert Antwerpen 31/3-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert Rotterdam 2/4-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 25/4-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert Bremen 15/5-1952
Besiktelsesrapport, datert Antwerpen 19/5-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert Hamburg 27/6-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 12/6-1952
Survey Report, datert New York 14/6-1952
" " , " Philadelphia 9/6-1952
Besiktelsesrapport, datert Antwerpen 3/7-1952.

Ærbödigst
DET NORSKE VERITAS

STEDF. ADM. DIREKTØR

Petitioner-Appellee's Exhibit M

TRANSLATION
from: FRENCH WB:mf

MARITIME COMMISSION OF THE COURT OF COMMERCE OF ANTWERP

On July 9, 1952, we the undersigned L. Castelain and F. Verworst, retired masters for high sea voyages, domiciled at Antwerp, maritime surveyors attached to the Court of Commerce of such city, having been requested on June 28, 1952 by the Black Diamond Lines, ship brokers and agents of the Norwegian vessel "BLACK GULL" and insofar as necessary by the master of this vessel to examine the stowing of the merchandise to be loaded by this vessel destined for New York and out-ports,

Herewith declare that we betook ourselves on board the said vessel where we examined the steamer and noted that the various compartments were in proper condition to receive the cargo.

Repeating our inspections on board during the loading of the merchandise, as frequently as necessary to check the stowing of the cargo, we found that all the merchandise was stowed in the various compartments with the necessary dunnage and was handled with the care necessary for their ocean transportation.

When the entire cargo had been loaded, we assured ourselves that all steps were taken for the preservation of the cargo during the voyage from any and all damage by the sea.

In witness whereof we have drawn up and signed the present report which we have issued to the petitioners for all lawful purposes.

Antwerp dated as above.

L. CASTELAIN
F. VERWORST

Petitioner-Appellee's Exhibit U

Notice to Shipping

No. 5/1952 dated 19th November 1952

Netherlands Staatscourant 1953, No. 11.

(Danger labels)

Having regard to the provisions of section 99, sub-section 13 of the "Schepenbesluit, 1952" (Shipping Decree, 1952) respecting the marking of packages of dangerous substances by means of a distinguishing label or plate, and the provisions of sub-section 12(a) of the said section,

notice is hereby given by the Inspector General of Shipping: that dangerous substances which are loaded in a Netherlands port or in a port of the Netherlands Antilles must bear a special symbol;

that pending the adoption of similar symbols for world goods traffic and in order to avoid confusion with existing danger labels, packages of dangerous substances shall be marked with the symbols specified in Annex III to Schedule I of the International Convention on the carriage of goods by railway (C.I.M., 1953 edition).

• • •

Petitioner-Appellee's Exhibit V

INSPECTOR GENERAL
OF SHIPPING

The Hague,
129 Bankastraat,
Telephone 51.43.91.

Maître W. M. E. van Rossem,
132 Meent,

ROTTERDAM

No. II 33 - 4687 Date: 20th August 1955.

Subject: carriage of naphthalene.

With reference to your question as to the origin of the text respecting the regulations in force in July 1952 with regard to the carriage of naphthalene as stated in our letter of 30th July 1954, No. II 33-3681, a copy of which letter you showed me, I beg to inform you:

(a) that the text is indeed identical with that in our copy of the above-mentioned letter;

(b) I cannot produce forthwith the original text of the regulations;

(c) the text has never been published, nor has any other text to date;

(d) the only regulation which I have been able to trace immediately, the date of compilation of which I cannot find out forthwith and which relates to the period before the Shipping Decree 1952 took effect, states that naphthalene has to be stowed under the following conditions: "on deck and/or *below deck, cool, well-ventilated,* away from foods and other articles for human consumption, and from living quarters, *not together with materials coming under sub-sections 1, 5, 6, 7 of section 94.*"

For and on behalf of the Inspector General of Shipping

(signed): J. METZ
Inspector of Shipping.

• • •

Petitioner-Appellee's Exhibit X

(COAT OF ARMS)
HAVENPOLITIE

ROTTERDAM, 6 November 1953.
Tel. 51314 (5 lijnen).

To whom it may concern:

In my capacity as Harbourmaster of Rotterdam, I, Captain Johannes van Leeuwen-Royal Netherlands Navy (ret), have the authority and duty of supervision and investigation under the "Havenverordening Rotterdam" (by-laws of the Rotterdam Harbour).

It is, amongst other things, my duty to ascertain that any restrictive rules or regulations concerning the handling of dangerous goods in the port of Rotterdam are being observed.

With regard to shipments of naphthalene in bags I hereby declare that no rules or regulations are in force here concerning this commodity and, accordingly, this office does not interfere with the handling of it.

The Harbourmaster of Rotterdam,

J. VAN LEEUWEN.

J. van Leeuwen.

• • •

Petitioner-Appellee's Exhibit Y and AA and AB

(Exhibit Y is a book in Norwegian. Exhibit AA and AB printed below are English translation of sections of Exhibit Y)

Page 169—Chapter XIII—(Trial Minutes page 879)

Exemptions and additional rulings.

Art. 123

1. We can allow exemption, in whole in part or conditionally, from compliance with one or more rulings of this act.[2]

2. In Our name the Chief Inspector of the Shipping Inspection Service can grant exemption from compliance with one or more rulings[v] of this act in whole, in part or conditionally if extraordinary circumstances permit to do so without endangering ship and crew.

3. In our name the commission as mentioned in Art. 1f can grant exemption from compliance with one or more rulings as given in Chapter VII of this act, in whole, in part or conditionally if extraordinary circumstances permit to do so without endangering ship and crew.

4. When granting waivers as mentioned in preceding sections of this article it will only be allowed to go so far as not to come into conflict with International Treaties pertaining to the case in hand.

5. In so far as International Treaties demand such, when waivers are granted by the "Chief Inspector of the Shipping Inspection Service" or by the "Loadline Commission" certificates in duplicate are to be issued.

---

[2] See ruling of Sept. 27, 1946 S. G. 2F1 and October 30, 1947 S. H. 360 incorporated in the appendix of this book.

[v] of Chap VII.

Petitioner-Appellee's Exhibit Y and AA and AB

(Exhibit Y is a book in Norwegian. Exhibit AA and AB printed below are English translation of sections of Exhibit Y)

Pages 21 and 22—Art. 2 Secs. I and II (trial minutes top page 888)

ART. 2

Page 21

1. The terms of this law are applicable to vessels registered in The Netherlands which are destined to or serve to undertake a voyage, with the exception of:

1f. Ships sailing under foreign flag and which do not come under the description as per the second section of this article under paragraph II.

2. For the application of the stipulation contained in the first section a vessel is considered to be registered in The Netherlands in the two cases mentioned hereafter:

2I. If the company by which it is operated, is established in The Netherlands.

II. If it is fitted out in The Netherlands and the crew for at least half consists of Netherlands citizens or residents of The Kingdom.

Petitioner-Appellee's Exhibit Z

Plan of "Black Gull" stowage of deck cargo

(OFFSET)

(For the convenience of Court and Counsel this Exhibit is bound in on the opposite page)

Note

Page A431 is
large plan on
card 7.

Claimant-Appellant's (Libellant's) Exhibit 17

Plan of "Black Gull" stowage of deck cargo

(OFFSET)

(For the convenience of Court and Counsel this Exhibit is bound in on the opposite page)

Note

Page A433 is
large plan on
card 8.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 37-A

DANGEROUS GOODS

Section 99.

1. The carriage of the substances mentioned in the present section shall be governed by the respective provisions given for each group in sub-sections 3 to 11 inclusive and by the further regulations issued by Our Minister in pursuance of sub-section 15 hereof.

• • •

(7)(c) Solid substances which are easily inflammable and which when heated to 70° Celsius may evolve combustible gases must be carried in gas-tight containers. These substances must be stowed at a safe distance from bulkheads which may be exposed to heating and from pipe lines which may radiate heat. If stowed on deck they may not be exposed to the direct rays of the sun.

The substances mentioned in this sub-section in (c) and substances mentioned in sub-section 3, 4, 8, 9 and 10 may not be stowed in the same space.

• • •

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 39

37181/39142 M.D.

We the Undersigned JOHN HUDIG & SON, having on the 10th September 1948 received application for survey from Messrs. N. V. SPEDICO, Forwarding Agents at ROTTERDAM, with the approval of Messrs. D. HUTTIG & Co., Insurance Brokers and Average Agents at ROTTERDAM, on

CALCO
NEW YORK 2.356 Bags Naphthaline.

intended for shipment to New York by s. s. "NORWALK VICTORY"

DO HEREBY CERTIFY

that having on the morning of the 10th September 1948 received notice of fire damage to the above parcel we immediately proceeded to the loading berth of the steamer and were informed that on the early morning a start was made with the transhipment of the parcel from lighter to the deck of s. s. "NORWALK VICTORY", it being intended to load the goods on the fore-deck in way of No. 1 and 2 hatches at portside and starboardside; when at about 10.30 a. m. 1.387 bags had been loaded a slingload of bags which was lowered at portside in way of No. 1 hatch at the afterpart suddenly caught fire, the cause of which could not be ascertained; the fire spread quickly over the other bags lying at portside but proper measures were taken to extinguish the fire and in a short while water was played by means of three ship's hoses and four hoses from the shore; the fire-brigade was alarmed but no assistance had to be rendered as the fire was under control at about 11 a. m. and definitely extinguished at 11.30 a. m.;

that on examination we found a large number of bags to be seriously damaged by fire; the master of s. s.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 39

"NORWALK VICTORY" in cooperation with Owners' superintendent and the ship's Agents decided to have the most seriously fire damaged bags discharged and not forwarded to destination; Mr. M. H. C. VAN ANDEL C. Mzn a local Surveyor, was appointed to act on behalf of the ship, without prejudice, and from 1 p. m. until late in the evening all the bags on deck of s. s. "NORWALK VICTORY" were examined as far as practicable by us and Mr. VAN ANDEL and in agreement with Owners' superintendent 450 seriously damaged bags were landed on to the quay;

that out of the quantity left on board a number of bags was damaged by fire to a less serious extent and a further number of bags was wet but it was not deemed necessary to discharge these bags;

that on the 11th September 1948 we further examined the 450 bags which had been discharged on the previous day and found this lot to be in bad condition and not fit for being reconditioned and shipped to destination; we recommended the goods to be sold to best advantage and the proceeds of sale amounted to:

450 bags actual grossweight 32.328 kilos
(including a large quantity of loose stuff)

Gross proceeds at per 1.000 kilos =	Fls. 30.19	Fls. 975.98
Cost of weighing, delivery and extra shed-rent incl. turnover-tax	Fls. 190.61	
Supervising weighing and delivery, brokerage etc.	" 59.20	
		" 249.81
NETT PROCEEDS		Fls. 726.17

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 39

that we attended the delivery and on examination of the parcel found all the bags to show traces of fire-damage;

Issued without prejudice and made subject to the terms and conditions of the Policy of Insurance of the Goods in question.

GIVEN at ROTTERDAM, this 5th day of November 1948.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

COPY OF THE NOTE OF PROTEST
S.S. "NORWALK VICTORY"

On this the eleventh day of September 1948 came and presented themselves before me, notary public, etc.:

(1) DAVID GARVIN OATES, master-mariner, residing at Baltimore, Master of the American steamship called:

"NORWALK VICTORY"

(2) etc.(names of the other members of the crew who also appeared before me), all of them serving in the said capacities on board the said vessel.

With respect to the occurrences on board the said vessel while lying at Rotterdam the party mentioned in (1) above declared and said as follows:

Whilst during the forenoon of 10th September 1948 we were discharging and loading at Rotterdam a fire broke out at 10.30 hrs. in bags of naphthalene, on deck, on the port side, in the way of No. 2 and 3 hatches. We immediately gave water with 5 ship's hoses and also started a number of fire extinguishers going, while in addition water was given with 3 shore-hoses. At 10.37 hrs. the municipal fire brigade arrived. At 10.42 hrs. we stopped giving water and after water had again been given on deck from 10.45 till 10.50 hrs. the fire was extinguished. The fire broke out in cargo taken on board from the barge "JONGE JAN", which was lying on the starboard side, probably in the last sling of cargo from the said barge, from which cargo was at that moment being loaded. The boatswain R. Dilbert was on the foredeck when the fire broke out and stated that he saw that the fire started in the last sling of cargo. At 11.30 hrs. we opened up No. 2 hold and made an examination in that hold, searching for any signs of fire, but found nothing. As

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

a result of the fire 3 tarpaulins on No. 2 hatch were damaged and 1 was completely destroyed, while in addition paintwork on the port side was damaged. About 750 bags of naphthalene were damaged by fire and by water used in extinguishing the fire. At 11.45 hrs. the fire brigade said that the fire was extinguished.

The party appearing mentioned in (1) above stated further that the damage caused to ship, ship's equipment and cargo by the fire and the action taken to extinguish the same was due solely to an occurrence which he was not reasonably able to avoid or avert.

The other parties appearing then declared and said, severally, that all the statements made by the Master contained a true account of the facts and that they confirmed the same without any qualification.

Finally, the parties appearing confirmed their statements on oath, after which they and I, the notary public, thereunto appended our several signatures.

• • •

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

VEREENIGDE DISPACHEURS
Mrs LYCKLAMA, BOELES & KRANENBURG
Mrs NAUTA, SCHADEE & LAMBERT
Mrs NOLST TRENITE, BEERMAN & BERGSMA

Mr H. SCHADEE

AFSCHRIFT DER SCHEEPSVERKLARING

S.S. "NORWALK VICTORY"

Heden de elfde September 1948 zijn voor mij Notaris enz. verschenen:

1°. David Garvin Oates Kapitein, wonede te Baltimore, gezagvoerder van het Amerik. stoom—schip genaamd "NORWALK VICTORY"

2°. enz. (namen van de mede-comparerende laden der bemanning) allen varende in gemelde hoedanigheid aan boord van genoemd schip.

De comparant sub 1 heeft omtrent de voorvallen met bovengemeld schip liggende te Rotterdam de navolgende verklaring afgelegd:

Terwijl wij des voormiddags van de 10de September 1948 te Rotterdam bezig waren met lossen en laden, brak te 10 uur 30 brand uit in balen naphtaline ann dek aan BB.zijde bij luiken 2 en 3. Wij gaven onmiddellijk water met 5 scheepsslagen en stelden mede een aantal blusapparaten in werking, terwijl ook met 3 slagen van de wal water gegeven werd. Te 10 uur 37 arriveerde de stadsbrandweer. Te 10 uur 42 hielden wij op met water geven en nadat vervolgens nog vanaf 10 uur 45 tot 10 uur 50 water aan dek was gegeven, was de brand geblust. De brand ontstond in lading overgenomen uit de lichter "Jonge Jan" welke aan SB. lag, vermoedelijk in de laatste sleng lading uit genoemde lichter, waaruit op dit moment geladen werd. De bootsman R.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

Dilbert was op het voordek toen de brand uitbrak en verklaarde, dat hij zag dat de brand ontstond in de laatste sleng lading. Te 11 uur 30 openden wij luik 2 en onderzochten dit luik naar eventuele tekenen van brand, doch vonden niets. Door het vuur zijn 3 presenningen op luik 2 beschadigd en 1 geheel vernield, terwijl ook verfwerk aan BB. beschadigd is. Ongeveer 750 zakken naphtaline zijn door vuur en bluswater beschadigd. Te 11 uur verklaarde de brandweer het vuur voor geblust.

En verder verklaarde de comparant sub 1, dat de door de brand en de blussingsmaatregelen veroorzaakte schade aan het schip, scheepsuitrusting en lading uitsluitend gevolg is van een voorval, dat hij redelijkerwijze niet heeft kunnen voorkomen of afwenden.—

De overige comparanten hebben vervolgens ieder voor zich verklaard, dat alle door hun gezagvoerder gedane verklaringen geheel met de waarheid overeenstemmen en dat zij die zonder enig voorbehoud bevestigen.

Ten slotte hebben alle comparanten de waarheid hunner verklaringen met ede bevestigd en met mij notaris getekend.

Voor extract conform:

(P. A431)

(P. 431) Petitioner-Appellee's Exhibit Z

CLASS.

DET NORSKE VERITAS ✠ I.A.I. WITH FREEBOARD.

MAIN MACHINERY.

ONE GÖTAVERKEN DIESELMOTOR TYPE DM 680 / 1500 V G 9, CYL. 9, 2 CYCLE, SINGLE ACTING, DIRECT REVERSIBLE, WITH SOLID INJECTION. TOTAL OUTPUT 6500 BHP. AT 112 R.P.M.

AUX. MACHINERY.

THREE GÖTAVERKEN DIESELGENERATORS TYP G5, CYL 5, 4 CYCLE, SINGLE ACTING, EACH OF 300 BHP. AND 200 KW. AT 350 R.P.M. ONE LISTER DIESELGENERATORS TYPE 3, 1PH, CYL 3, 4 CYCLE, SINGLE ACTING OF 24 BHP AND 15 KW. AT 1200 R.P.M.

FIRE EXTINGUISHING.

CO_2 FIRE EXTINGUISHING TO ALL HOLDS AND TWEEN-DECKS.

REFR. PLANT FOR CARGO.

OF FREON - TYPE 2 COMPRESSORS. DELIVERED BY MESSRS. L. STERNE & CO. LTD. GLASGOW.

TONNAGE.

	NORWEGIAN	SWEDISH	PANAMA	SUEZ
GROSS TONNAGE	4929.19	6215.78	7269.19	7329.06
NET. -"-	2846.16	4843.28	5668.07	5463.62
UNDER DECK	4171.87	4126.61	4171.87	4191.31

CARGO CAPACITIES.

COMPARTMENT.	GRAIN CUB. MET.	GRAIN CUB. FEET	BALES CUB. MET.	BALES CUB. FEET
#1 HOLD	3380	119340	3068	108380
#2 -"-	1440	50860	1322	46670
#3 -"-	2624	92630	2393	82370
#4 -"-	1774	62820	1546	54550
TOTAL UNDER DECK	9218	325150	8330	293770
#1 TWEENDECK	978	34530	876	30930
#2 -"-	951	33540	879	31050
STRONGROOM	104	3650	88	3040
#3 TWEENDECK	387	13620	359	12660
#4 -"-	1135	40080	1032	36450
STRONGROOM	148	5250	131	4640
#5 TWEENDECK	1160	40960	1063	37530
TON. WELL	87	3080	77	2700
TOTAL TWEENDECK	4951	174760	4505	159060
#3 TWEENDK STORE (REFR SPACE)	235	8300	235	8300
#3 -"- PORT. -"-	235	8300	235	8300
TOTAL REFRIGERATED CARGO	470	16600	470	16600
TOTAL HOLD AND TWDK SPACES	14544	513510	13305	469430
#1 DEEPTANK STARB.	219	7730	196.5	6935
#1 -"- PORT.	219	7730	196.5	6935
#2 -"- STARB.	256	9030	227.5	8035
#2 -"- PORT.	256	9030	227.5	8035
TOTAL CARGO TANKS	950	33520	848	29940
TOTAL CARGO SPACE	15484	547030	14145	499370

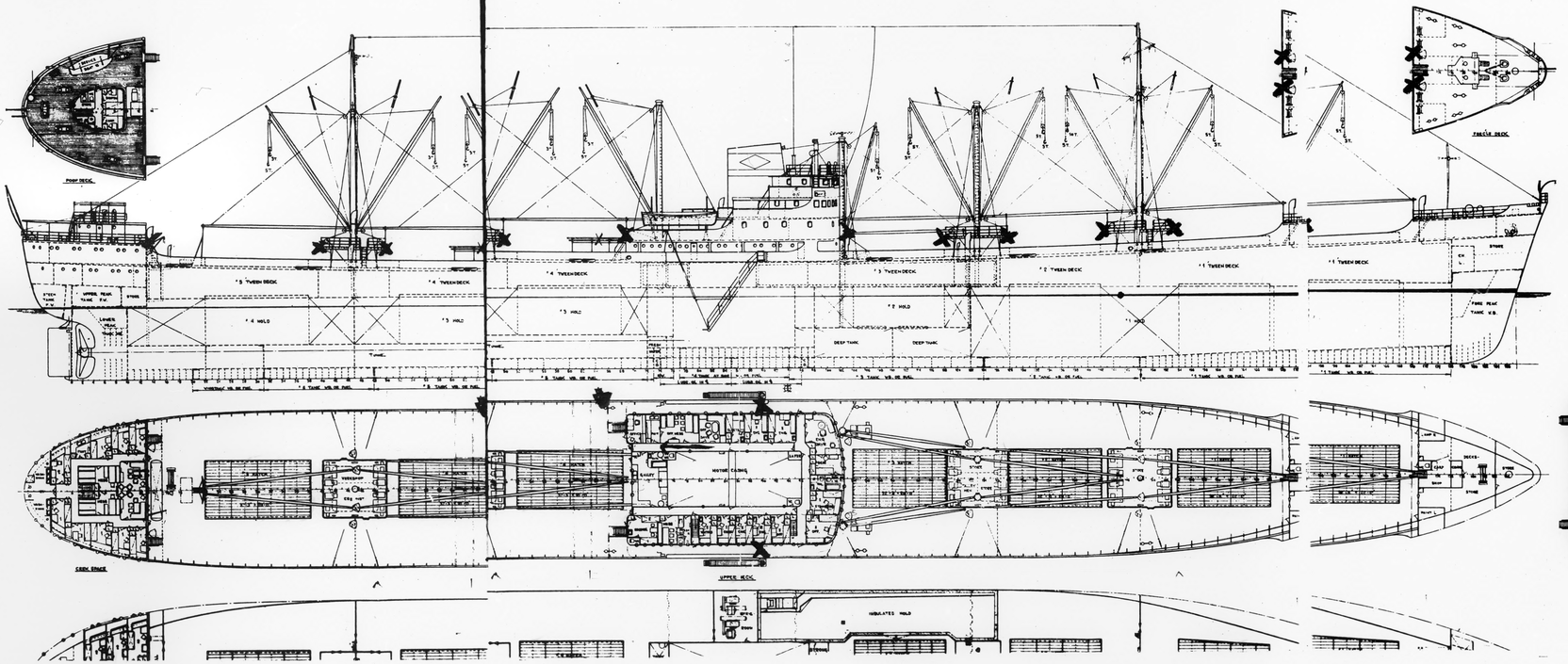
OIL BUNKERS, FRESH WATER AND WATER BALLAST CAPACITIES.

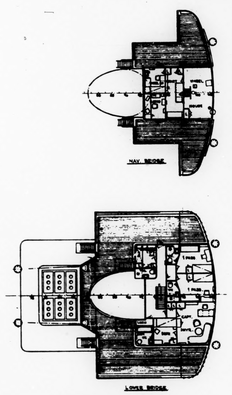
COMPARTMENT.	FRESH WATER SPEC GRAV 1.000 TONS & 10½ KG	SALT WATER SPEC GRAV 1.025 TONS & 10½ KG	FUEL OIL SPEC GRAV 0.9 TONS & 10½ KG
DOUBLE BOTTOM.			
#1 TANK	121.4	124.4	109.9
#2 -"- STARB.	98.2	100.7	88.9
#2 -"- PORT.	98.2	100.7	88.9
#3 -"- STARB.	157.8	161.7	142.8
#3 -"- PORT.	157.8	161.7	142.8
#4 -"- STARB.	159.8	163.7	144.7
#4 -"- PORT.	159.8	163.7	144.7
#5 -"- STARB.	115.7	118.6	104.1
#5 -"- PORT.	115.7	118.6	104.1
#6 -"- STARB.	42.3	43.3	38.1
#6 -"- PORT.	42.3	43.3	38.1
WING TANK STARB.	53.2	54.5	47.9
-"- PORT.	62.9	64.5	56.6
LUBRICATING OIL FRAME 85-86			24.3
-"- -"- -"- 74-85			24.3
FRESH WATER TANK LOWER FRAME 73-74 STARB.	11.7		
-"- -"- -"- -"- PORT.	7.7		
-"- -"- -"- UPPER -"- STARB.	31.5		
-"- -"- -"- -"- -"- PORT.	23.6		
TOTAL IN DOUBLE BOTTOM	1380.1	1414.5	1245.3
FORE PEAK TANK	87.0	89.2	
AFTER -"- -"-	70.0	71.7	
F.W. TANK AFT. FRAME 70-69	98.0		
STERN TANK F.W.	35.6		
TOTAL BALLAST CAPACITY		1575.4	
-"- BUNKER -"-			1245.3
#1 DEEPTANK STARB.	231.8	237.6	208.6
#1 -"- PORT.	231.8	237.6	208.6
#2 -"- STARB.	269.6	276.3	242.6
#2 -"- PORT.	269.6	276.3	242.6
TOTAL CARGO TANKS	1002.8	1027.8	902.4

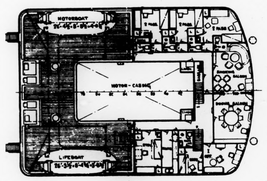
BALE CAPACITIES ARE TAKEN TO INSIDE OF BATTENS AND TO UNDERSIDE OF BEAMS.
GRAIN -"- -"- -"- -"- TO TOP -"- -"- OF BEAMS.
THESE PARTICULARS ARE BELIEVED TO BE CORRECT BUT ARE NOT GUARANTEED.

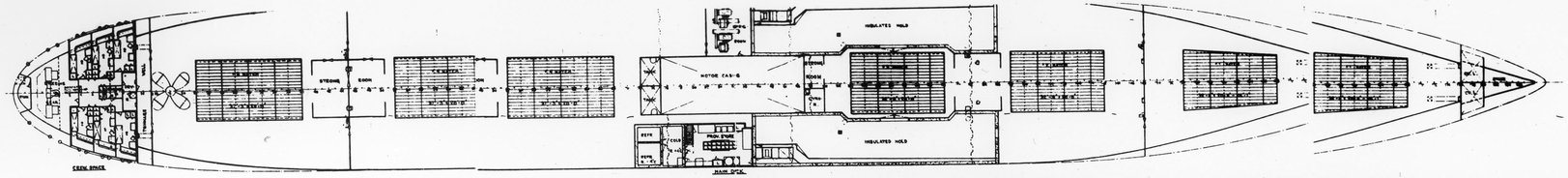
INT. LOAD LINE FREEBOARD	
TROPICAL FRESH WATER	2'- 3"
SUMMER FRESH WATER	2'- 9½"
TROPICAL SALT WATER	2'- 9¾"
SUMMER SALT WATER	3'- 4½"
WINTER SALT WATER	3'- 10¾"

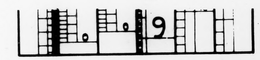
LOAD LINE FREEBOARD	DRAFT METRES	DRAFT FEET	D.W.
TROPICAL FRESH WATER 2'- 3"	8183	26'- 10 5/16"	9080
SUMMER FRESH WATER 2'- 9½"	8017	26'- 3 5/16"	8800
TROPICAL SALT WATER 2'- 9¾"	8011	26'- 3 1/16"	9100
SUMMER SALT WATER 3'- 4½"	7846	25'- 8 5/16"	8800
WINTER SALT WATER 3'- 10¾"	7681	25'- 2 3/8"	8500











SCALE 0 5 10 15 METRES

SCALE 5 10 15 20 30 METRES

LOAD SCALE

DRAFT IN METRES	D.W. TONS SALT WATER 1.025	D.W. TONS FRESH WATER 1.000	DRAFT IN FEET.	TONS PER INCH IN SALT WATER	MOMENT TO ALTER TRIM ONE INCH IN FOOT TONS.
8.0	9000	9000	26	47	1200
7.5	8500	8500	25	46	1100
7.0	8000	8000	24	45	1000
6.5	7500	7500	23	44	900
6.0	7000	7000	22	43	800
5.5	6500	6500	21	42	
5.0	6000	6000	20	41	
4.5	5500	5500	19	40	
4.0	5000	5000	18		
3.5	4500	4500	17		
3.0	4000	4000	16		
	3500	3500	15		
	3000	3000	14		
	2500	2500	13		
	2000	2000	12		
	1500	1500	11		
	1000	1000	10		
	500	500	9		
	0	0			

M/S 'BLACK GULL'

OWNERS: SKIPSAKTIESELSKAPET JØLUND, OSLO.
(SIGURD HERLOFSON & CO. A/S)

BUILT BY: ÖRESUNDSVARVET AB, LANDSKRONA, SWEDEN.

1948.

LENGTH OVER ALL	458'-5"	139.73 M.
LENGTH BETW. P.P.	430'-0"	131.06 "
BREADTH MOULDED	57'-0"	17.37 "
DEPTH -"- TO SECOND DK	29'-0"	8.84 "
DEPTH -"- TO UPPER DK	38'-0"	11.58 "
DRAFT ON SUMMERFREEBOARD	25'-8 7/16"	7.85 "

Z 73

0-093-029

A. B. KOMA, STOCKHOLM

A 442

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

* * *

DANGEROUS GOODS

BY

DR. JULIUS AEBY

Consulting Chemist to the : RED STAR LINE : at Antwerp

* * *

43, RUE DE L'EMPEREUR

ANVERS

1910

* * *

PREFACE

For nearly ten years, I have supplied to the great shipping companies of this city, information as to the properties of chemical products from the point of view of their possible danger in transport. I have frequently acted as expert, before the law-courts, or for insurers or assured, concerning statements of averages caused by the presence in cargo of inflammable, explosive or otherwise troublesome substances.

In the course of this almost daily experience, it has become evident to me that many errors and misapprehensions exist, and that the need is felt of a book, at once technical and popular, which can be consulted by those interested in the subject. For this reason, I have decided to present in this volume the fruits of my experience, together with data that I have been able to collect from the most diverse sources.

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

It is scarcely necessary to add that the results of my labours must needs be incomplete, and that in subsequent editions many features will be modified. One cannot at once produce a work that will satisfy interests so divergent as those of maritime commerce, of insurers and of a public needing protection.

• • •

HOW THIS BOOK SHOULD BE USED

The French, English and German names, together with the common synonyms of several hundred different products are arranged in alphabetical order in the index. Beside each name in the index a figure is given, referring to the number in the text. Here the reader will consult the notes on the substance, using the language most familiar to him. He will also find, above and below the principal name, its chemical formula, with notice as to whether the body is solid or liquid, organic or inorganic.

The chemical formula has no other (raison d'être) than that of facilitating, if occasion arises, the identification of a substance. As to the mention of *solid* or *liquid,* it is scarcely necessary to remark on its utility. *Organic compound* signifies here that the product is capable of burning when fire is applied, as contrasted with *inorganic compounds* which have generally not this property.

The interpretation that will be given to the notes characterizing each body will doubtless vary according to the various categories of readers. I cannot do more than earnestly request them to read the introductory and explanatory notes that follow, so that they may be in a position to use this book in the spirit in which it has been written.

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

A certain space below the name of each product has been reserved for the manuscript notes of the reader.

* * *

e) Substances of which the dust is inflammable, as colophony and naphthalene.

f) Substances capable of gathering heat and of igniting by reason of the organic bodies which they impregnate, such as fats and oils packed in cotton waste.

Mention may here be made of substances such as the bichromates of potassium and sodium which, though presenting no difficulties so far as they themselves are concerned, render paper, for instance, very easily inflammable when impregnated with them. In a case of goods damaged by sea-water, I was shown barrels containing bichromate of sodium. These barrels had been made a little damp by sea-water, with the result that the packing paper with which the interior of the casks was lined, had become impregnated with bichromate. Now this paper, thus impregnated, was much more easily inflammable than ordinary paper and constituted a greater danger by reason of this secondary cause.

A few words may here be said regarding nitrate of soda, a chemical manure which today gives rise to such important transactions. Despite a rather widespread idea to the contrary, nitrate in itself presents no danger; it will not even take fire and one may plunge hot iron into it without harmful results. But since nitrate is always more or less damp, and, further, since it absorbs moisture from the air, it impregnates the bags in which it is packed, and these bags when they have become dry again, are very easily inflammable.

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

An expert captain, sent to Chili by an insurance company, expresses himself in the following sense:

(The origin of the frequent conflagrations on nitrate ships can usually be traced to carelessness. On many sailing-boats and steamers the holds are not closed at night and are therefore exposed to danger. This is particularly the case in the hold near the men's quarters, where the sailors smoke and throw matches and the ends of cigarettes on the bags of nitrate. Insurance companies ought to require all the holds to be closed every evening, and they should forbid the use of petroleum lamps and naked flames.)

* * *

219

NAPHTALENE or Albo-carbon
Solid Coal tar camphor
Organic compound
Strong smell. Inflammable. Its vapors are explosive.
More dangerous when not pure.

* * *

(Page A 433)

CLASS.

DET NORSKE VERITAS ✠ I.A.I. WITH FREEBOARD.

MAIN MACHINERY.

ONE GÖTAVERKEN DIESELMOTOR TYPE DM 680/1500 V.G.9. CYL.9. 2 CYCLE. SINGLE ACTING. DIRECT REVERSIBLE. WITH SOLID INJECTION. TOTAL OUTPUT 6500 BHP. AT 112 R.P.M.

AUX. MACHINERY.

THREE GÖTAVERKEN DIESELGENERATORS TYP G5. CYL 5. 4 CYCLE. SINGLE ACTING. EACH OF 300 BHP. AND 200 KW. AT 350 R.P.M. ONE LISTER DIESELGENERATORS TYPE 3. 2PH. CYL 3. 4 CYCLE. SINGLE ACTING OF 24 BHP. AND 15 KW. AT 1200 R.P.M.

FIRE EXTINGUISHING.

CO_2 FIRE EXTINGUISHING TO ALL HOLDS AND TWEEN-DECKS.

REFR. PLANT. FOR CARGO.

OF FREON - TYPE. 2 COMPRESSORS. DELIVERED BY MESSRS. L. STERNE & CO. LTD. GLASGOW.

TONNAGE.

	NORWEGIAN	SWEDISH	PANAMA	SUEZ
GROSS TONNAGE	4629.49	6215.78	7294.10	7320.04
NET. -"-	2846.16	4843.08	5668.07	5463.62
UNDER DECK	4171.87	4126.61	4171.87	4141.31

CARGO CAPACITIES.

COMPARTMENT.	GRAIN CUB. MET.	GRAIN CUB FEET	BALES CUB MET.	BALES CUB FEET
#1 HOLD	3380	119340	3068	108380
#2 -"-	1440	50860	1322	46670
#3 -"-	2524	89130	2333	82370
#4 -"-	1770	62520	1546	54550
TOTAL UNDER DECK	9113	321850	8320	293770
#1 TWEENDECK	678	24530	876	30950
#2 -"-	991	33560	976	31030
STRONGROOM	104	3650	88	3090
#3 TWEENDECK	387	13620	358	12640
#4 -"-	1135	40080	1032	36450
STRONGROOM	148	5250	151	5340
#5 TWEENDECK	1160	40960	1063	37530
TOW. WELL	87	3080	77	2700
TOTAL TWEENDECK	4691	1747160	4505	154060
#3 TWEENDK STAIRS (KEEP SPACE)	235	8300	235	8300
#3 -"- PORT -"-	235	8300	235	8300
TOTAL REFRIGERATED CARGO	470	16600	470	16600
TOTAL HOLD AND TWDK SPACES	14544	513510	13295	469450
#1 DEEPTANK STARB.	219	7730	196.5	6935
#1 -"- PORT.	219	7730	196.5	6935
#2 -"- STARB.	256	9030	227.5	8035
#2 -"- PORT.	256	9030	227.5	8035
TOTAL CARGO TANKS	950	33520	848	29940
TOTAL CARGO SPACE	15494	547030	14143	499370

OIL BUNKERS, FRESH WATER AND WATER BALLAST CAPACITIES

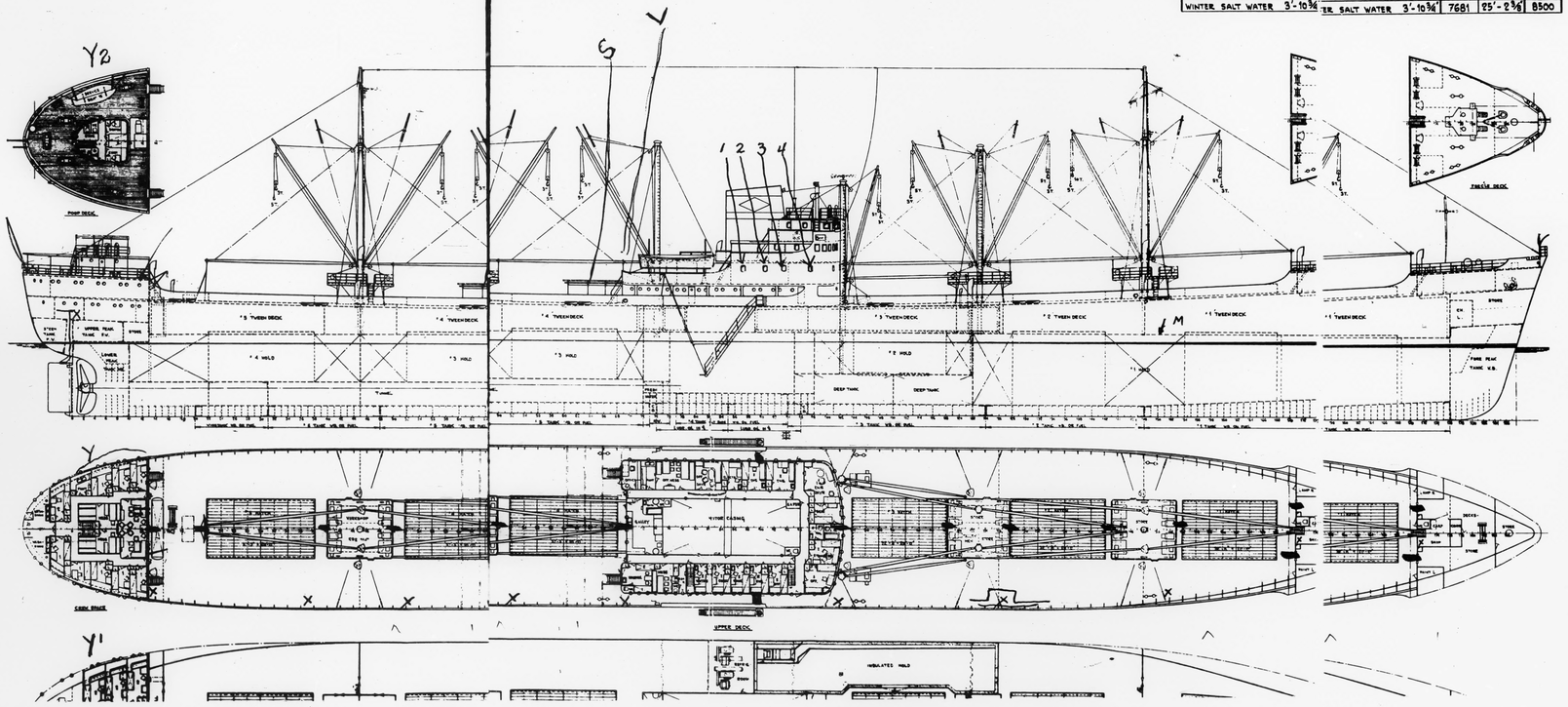
COMPARTMENT.	FRESH WATER SPEC GRAV 1.0 TONS	FRESH WATER SPEC GRAV 1.0 CUB FEET	SALT WATER SPEC GRAV 1.025 TONS	SALT WATER SPEC GRAV 1.025 CUB FEET	FUEL OIL SPEC GRAV 0.9 TONS	FUEL OIL SPEC GRAV 0.9 CUB FEET
DOUBLE BOTTOM.						
#1 TANK			121.4	134.4	109.3	
#2 -"- STARB.			98.2	100.7	88.3	
#2 -"- PORT.			98.2	100.7	88.3	
#3 -"- STARB.			157.8	161.7	142.0	
#3 -"- PORT.			157.8	161.7	142.0	
#4 -"- STARB.			151.4	155.7	140.1	
#4 -"- PORT.			162.7	166.8	146.4	
#5 -"- STARB.			115.7	118.6	104.1	
#5 -"- PORT.			115.7	118.6	104.1	
#6 -"- STARB.			42.3	43.3	38.1	
#6 -"- PORT.			42.3	43.3	38.1	
WING TANK STARB.			53.2	54.5	47.8	
-"- -"- PORT.			62.9	64.9	56.6	
LUBRICATING OIL FRAME 85-86						24.3
-"- -"- -"- 74-85						24.3
FRESH WATER TANK LOWER -"-	71-72 STARB.	11.7				
-"- -"- -"- -"-	71-72 PORT.	7.7				
-"- -"- -"- UPPER -"-	71-72 STARB.	31.5				
-"- -"- -"- -"-	71-72 PORT.	23.6				
TOTAL IN DOUBLE BOTTOM		1380.1	1414.5			1245.3
FORE PEAK TANK		87.0	89.2			
AFTER -"- -"-		70.0	71.7			
F.W. TANK AFT. FRAME 70-69		98.0				
STERN TANK F.W.		35.6				
TOTAL BALLAST CAPACITY			1575.4			
-"- BUNKER -"-						1245.3
#1 DEEPTANK STARB.		231.8	237.6			208.6
#1 -"- PORT.		231.8	237.6			208.6
#2 -"- STARB.		265.6	276.3			242.6
#2 -"- PORT.		265.6	276.3			242.6
TOTAL CARGO TANKS		1002.8	1027.8			902.4

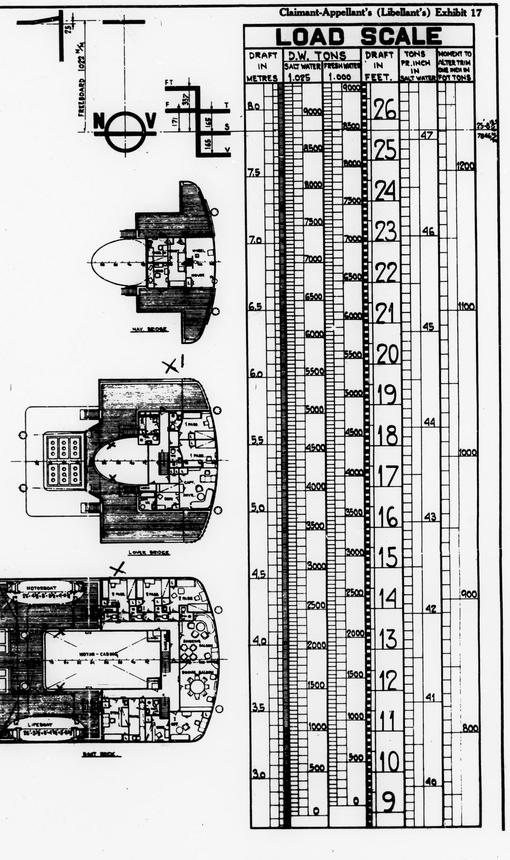
BALE CAPACITIES ARE TAKEN TO INSIDE OF BATTENS AND TO UNDERSIDE OF BEAMS.
GRAIN -"- -"- -"- OUTSIDE OF FRAMES -"- -"- TOP -"- -"-
THESE PARTICULARS ARE BELIEVED TO BE CORRECT BUT ARE NOT GUARANTEED.

A/S. KOMA, STOCKHOLM

INT. LOAD LINE	FREEBOARD
TROPICAL FRESH WATER	2'-3"
SUMMER FRESH WATER	2'-9½"
TROPICAL SALT WATER	2'-9¾"
SUMMER SALT WATER	3'-4¼"
WINTER SALT WATER	3'-10¾"

LOAD LINE	FREEBOARD	DRAFT METRES	DRAFT FEET	D.W.
CAL FRESH WATER	2'-3"	8183	26'-10⅜"	9080
ER FRESH WATER	2'-9½"	8017	26'-3⅝"	8800
ICAL SALT WATER	2'-9¾"	8011	26'-3⅜"	9100
MER SALT WATER	3'-4¼"	7846	25'-8⅝"	8800
ER SALT WATER	3'-10¾"	7681	25'-2⅜"	8500





LOAD SCALE

DRAFT IN METRES	D.W. TONS SALT WATER	D.W. TONS FRESH WATER	DRAFT IN FEET.	TONS PER INCH IN SALT WATER	MOMENT TO ALTER TRIM ONE INCH IN SALT WATER TONS
8.0	9000	8500	26	47	1200
7.5	8500	8000	25		
7.0	8000	7500	24	46	1100
6.5	7500	7000	23		
6.0	7000	6500	22	45	1000
5.5	6500	6000	21		
5.0	6000	5500	20	44	900
4.5	5500	5000	19		
4.0	5000	4500	18	43	800
3.5	4500	4000	17		
3.0	4000	3500	16	42	
	3500	3000	15		
	3000	2500	14	41	
	2500	2000	13		
	2000	1500	12	40	
	1500	1000	11		
	1000	500	10		
	500	0	9		

SCALE 0 5 10 0

SCALE 0 50 100 150 200 METRES.

M/S "BLACK GULL"

OWNERS: SKIPSAKTIESELSKAPET JØLUND, OSLO.
[SIGURD HERLOFSON & CO. A/S]
BUILT BY: ÖRESUNDSVARVET AB., LANDSKRONA, SWEDEN.
1948.

LENGTH OVER ALL	458'-5"	139.73 M.
LENGTH BETW. P.P.	430'-0"	131.06 "
BREADTH MOULDED	57'-0"	17.37 "
DEPTH -"- TO SECOND DK	29'-0"	8.84 "
DEPTH -"- TO UPPER DK	36'-0"	11.58 "
DRAFT ON SUMMERFREEBOARD	25'-8⅝"	7.85 "

0-095-099